

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

-----:
:
PHILIP R. MCHUGH, :
:
Plaintiff, :
:
vs. : CASE NO.
:
FIFTH THIRD BANCORP, et : 1:21-cv-00238
:
al., :
:
Defendants. :
-----:

Videotaped

Deposition of: EILEEN A. MALLESCH

Taken: By the Plaintiff

Pursuant to Notice

Date: July 10, 2024

Time: Commencing at 9:53 a.m.

Place: Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202

Before: Pamela L. Jackson
and
Connie Adkins-Ihle,
Videographer
Notaries Public-State of Ohio

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Peter A. Saba, Esq.

4 Joshua M. Smith, Esq.

5 and

6 Bailey E. Sharpe, Esq. (Via Videoconference)

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15 On behalf of the Defendants and the Deponent:

16 Michael L. Cioffi, Esq.

17 and

18 Collin D. Hart, Esq.

19 of

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Also Present:

Philip R. McHugh

Phenise Poole, Esq., Fifth Third Bancorp

Brian Thomas, Esq., Fifth Third Bancorp

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I N D E X

EILEEN A. MALLESCH

PAGE

Examination by Mr. Saba

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Examination by Mr. Cioffi

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Further Examination by Mr. Saba

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EXHIBITS

MARKED

REFERENCED

Deposition Exhibit 1

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Deposition Exhibit 2

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Deposition Exhibit 3

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Deposition Exhibit 4

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Deposition Exhibit 5

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<p>Page 4</p> <p>1 THE VIDEOGRAPHER: We're on 2 videotape record. Today is Wednesday, July 3 the 10th, 2024. The time is 9:53 a.m. We're 4 here today to take the deposition of Eileen 5 A. Mallesch in the case styled Philip R. 6 McHugh versus Fifth Third Bancorp, et al., 7 United States District Court, Southern 8 District of Ohio, Western Division, Case No. 9 1:21-cv-00238. 10 Would the attorneys now introduce 11 themselves and say who you represent? 12 MR. SABA: Peter Saba for the 13 Plaintiff, Philip R. McHugh. 14 MR. SMITH: Joshua Smith for the 15 Plaintiff, Phil R. McHugh. 16 MR. CIOFFI: Michael Cioffi and 17 Collin Hart of Blank Rome on behalf of the 18 Defendants. We also represent Eileen 19 Mallesch, the witness, personally pursuant to 20 a joint representation agreement. Also 21 representing the Defendants are Brian Thomas 22 and Phenise Poole. 23 THE VIDEOGRAPHER: Would the court 24 reporter please swear in the witness? 25</p>	<p>Page 6</p> <p>1 then she's within -- she's -- she's a lawyer, 2 paralegal, in your office? 3 MR. SABA: Lawyer in my office, 4 correct. 5 MR. CIOFFI: Okay. So as you know 6 there is some confidential information you 7 may or may not use. I just want to make sure 8 no one else who's not within that privilege 9 will not see or listen to those questions, 10 No. 1. No. 2, is it my understanding -- is 11 my understanding correct that this is also 12 being recorded somehow on Zoom? 13 MR. SABA: That I don't know. 14 MR. CIOFFI: Is the -- Do you know? 15 THE VIDEOGRAPHER: From what I 16 understand. 17 THE REPORTER: I didn't know it was 18 and I tried to get ahold of Wendy and I'm not 19 able to, but she's the host so I can't cancel 20 it, the recording. 21 MR. CIOFFI: I just want to make 22 the record clear that there's only one 23 official video of this and it's by this 24 particular videographer and we'll ask you to 25 deliver your video to us, and in this day and</p>
<p>Page 5</p> <p>1 EILEEN A. MALLESCH 2 of lawful age, a witness herein, being first duly 3 sworn as hereinafter certified, was examined and 4 deposed as follows: 5 EXAMINATION 6 BY MR. SABA: 7 Q Ms. Mallesch, can you go ahead and 8 state your name for the record, please, and spell your 9 last name? 10 A Eileen Ann Mallesch, 11 M-a-l-l-e-s-c-h. 12 Q Have you ever had your deposition 13 taken before? 14 A No. 15 MR. CIOFFI: Hey, Counsel, one -- 16 one more thing for the record before you get 17 into your questioning. It's my understanding 18 that this is being broadcast simultaneously 19 on Zoom; is that correct? 20 MR. SABA: That's my understanding. 21 MR. CIOFFI: And who is watching 22 it? 23 MR. SABA: Just Bailey A. Warden 24 from our office. 25 MR. CIOFFI: If she's the only one</p>	<p>Page 7</p> <p>1 age as you know, you know, video media can be 2 manipulated so we want to make sure that this 3 is -- everyone agrees that this is the 4 official video of the deposition? 5 MR. SABA: We agree. 6 MR. CIOFFI: All right. Thank you. 7 BY MR. SABA: 8 Q Ms. Mallesch, I am going to be 9 asking you a series of questions today. If there's 10 anything you don't hear or don't understand please 11 feel free to ask me to repeat or rephrase the 12 question. For the sake of the court reporter, 13 notwithstanding that this is being taken via video, I 14 do need you to answer verbally, no shaking or nodding 15 of the head or unh-unhs or uh-huhs. It's difficult to 16 take that down for the record. 17 A I understand. 18 Q Additionally if you could wait for 19 me to finish my question before you answer and I'll 20 try and do the same before I ask another question and 21 it also makes for a clearer record. Do you understand 22 all those instructions? 23 A I do. 24 Q Can you go ahead and give me your 25 address, please?</p>

<p>Page 8</p> <p>1 A 1217 Sanctuary Place, Gahanna,</p> <p>2 Ohio, 43230.</p> <p>3 Q How long have you lived there?</p> <p>4 A 18 years.</p> <p>5 Q Who do you live there with?</p> <p>6 A My husband.</p> <p>7 Q How long have you been married?</p> <p>8 A 23 years.</p> <p>9 Q What's the extent of your</p> <p>10 education?</p> <p>11 A Bachelor's Degree -- Bachelor of</p> <p>12 Science Degree in Accounting.</p> <p>13 Q When did you receive that?</p> <p>14 A 1985.</p> <p>15 Q Where did you receive that from?</p> <p>16 A City University of New York,</p> <p>17 Herbert H. Lehman College.</p> <p>18 Q The litigation that brings us here</p> <p>19 today have you discussed this litigation with any of</p> <p>20 the other board members from Fifth Third Bank?</p> <p>21 A No.</p> <p>22 Q Have you discussed this litigation</p> <p>23 with any of the employees of Fifth Third Bank?</p> <p>24 A No.</p> <p>25 Q Have you reviewed the video or</p>	<p>Page 10</p> <p>1 Instruct her not to answer.</p> <p>2 BY MR. SABA:</p> <p>3 Q Have you reviewed the video or</p> <p>4 transcript of Marsha Williams' deposition?</p> <p>5 MR. CIOFFI: Same objection.</p> <p>6 Instruct her not to answer.</p> <p>7 BY MR. SABA:</p> <p>8 Q Have you reviewed the video or</p> <p>9 transcript of Nicholas Akins' deposition?</p> <p>10 MR. CIOFFI: Same objection.</p> <p>11 Instruct her not to answer.</p> <p>12 BY MR. SABA:</p> <p>13 Q Have you reviewed the video or</p> <p>14 transcript of Greg Carmichael's deposition?</p> <p>15 MR. CIOFFI: Same objection.</p> <p>16 Instruct her not to answer.</p> <p>17 BY MR. SABA:</p> <p>18 Q Was there any testimony in</p> <p>19 Mr. McCallister's deposition that you disagree with?</p> <p>20 MR. CIOFFI: Same objection.</p> <p>21 Instruct her not to answer.</p> <p>22 (Deposition Exhibit 1 was marked</p> <p>23 for identification.)</p> <p>24 BY MR. SABA:</p> <p>25 Q Ms. Mallesch, I'm handing you</p>
<p>Page 9</p> <p>1 transcript of Michael McCallister's deposition?</p> <p>2 MR. CIOFFI: Objection. Whatever</p> <p>3 this witness has viewed she viewed at my</p> <p>4 request as her counsel. It, therefore,</p> <p>5 reflects my attorney-client judgment as to</p> <p>6 what she should or should not review and is</p> <p>7 privileged, so I'm going to instruct her not</p> <p>8 to answer that. I'll allow her to answer if</p> <p>9 she's -- she's reviewed any material other</p> <p>10 than the material I directed her to review.</p> <p>11 BY MR. SABA:</p> <p>12 Q Other than Mr. Cioffi's instruction</p> <p>13 to review Mr. McCallister's video or transcript have</p> <p>14 you -- have you reviewed Mr. McCallister's video or</p> <p>15 transcript?</p> <p>16 MR. CIOFFI: Just so the record's</p> <p>17 clear I didn't say I directed her to review</p> <p>18 that transcript. I did instruct her to</p> <p>19 review a lot of material and again all of</p> <p>20 that's protected by the attorney-client</p> <p>21 privilege.</p> <p>22 BY MR. SABA:</p> <p>23 Q Have you reviewed or -- the video</p> <p>24 or read the transcript of Gary Heminger's deposition?</p> <p>25 MR. CIOFFI: Same objection.</p>	<p>Page 11</p> <p>1 what's been marked as Exhibit No. 1 which is the</p> <p>2 Amended Notice for your deposition today and a</p> <p>3 Request For Production Of Documents. Have you ever</p> <p>4 seen Exhibit 1 before?</p> <p>5 A Yes.</p> <p>6 Q Do you have any documents with you</p> <p>7 today?</p> <p>8 A No.</p> <p>9 MR. CIOFFI: Counsel, I'll say on</p> <p>10 the record as I have in other depositions</p> <p>11 when you have asked this question and showed</p> <p>12 a similar Notice that to the extent these</p> <p>13 documents exist and are within the custody</p> <p>14 and control of Fifth Third they have been</p> <p>15 produced. You may continue.</p> <p>16 BY MR. SABA:</p> <p>17 Q Ms. Mallesch, I am going to refer</p> <p>18 you to Page 6 of Exhibit No. 1 --</p> <p>19 A Yes.</p> <p>20 Q -- and in the middle of the page</p> <p>21 No. 14 there's a definition for the words</p> <p>22 "Communications" or "Communicate" -- Do you see that?</p> <p>23 A I do.</p> <p>24 Q And that reads, "The words</p> <p>25 'Communications' or 'Communicate' mean any</p>

<p>Page 12</p> <p>1 correspondence, disclosure, transfer or exchange of</p> <p>2 information, whether oral or written, and whether in</p> <p>3 person, by telephone, mail, email, telecopy, text</p> <p>4 message, or other 'Document' form, including but not</p> <p>5 limited to discussions, statements, negotiations,</p> <p>6 inquiries, requests, notices, responses, or demands"</p> <p>7 -- Do you see that?</p> <p>8 A I do.</p> <p>9 Q Do you understand that definition?</p> <p>10 A I do.</p> <p>11 Q The first request asked for,</p> <p>12 "Communications between You and any other Director or</p> <p>13 Officer of Fifth Third which refers to, mentions, or</p> <p>14 otherwise relates to: Succession planning for the</p> <p>15 position of President and/or CEO of Fifth Third Bank."</p> <p>16 Do you have any documents responsive to that request?</p> <p>17 A No.</p> <p>18 Q 1(b) asks for, "Communications</p> <p>19 identified and/or selected candidates for the position</p> <p>20 of President and/or CEO of Fifth Third." Do you have</p> <p>21 any documents responsive to that request?</p> <p>22 A No.</p> <p>23 Q 1(c) asks for, "Processes or</p> <p>24 timelines, whether proposed or final, with respect to</p> <p>25 the identification and/or selection of candidates for</p>	<p>Page 14</p> <p>1 Q No. 2 asks for, "Any Communications</p> <p>2 between You and Philip McHugh." Do you have any</p> <p>3 documents responsive to that request?</p> <p>4 A No.</p> <p>5 Q Request 3 asks for, "Any</p> <p>6 Communication between You and Tim Spence." Do you</p> <p>7 have any documents responsive to that request?</p> <p>8 A No.</p> <p>9 Q No. 4 asks for, "All Documents</p> <p>10 created, received, or obtained by You which refer,</p> <p>11 mention, or otherwise relate to," and under 4(a) it</p> <p>12 says, "Succession planning for the position of</p> <p>13 President and/or CEO of Fifth Third." Do you have any</p> <p>14 documents responsive to that request?</p> <p>15 A No.</p> <p>16 Q 4(b) asks for, "Identified and/or</p> <p>17 selected candidates for the position of President</p> <p>18 and/or CEO of Fifth Third." Do you have any documents</p> <p>19 responsive to that request?</p> <p>20 A No.</p> <p>21 Q 4(c) asks for, "Processes or</p> <p>22 timelines, whether proposed or final, with respect to</p> <p>23 the identification and/or selection of candidates for</p> <p>24 the position of President and/or CEO of Fifth Third."</p> <p>25 Do you have any documents responded to that --</p>
<p>Page 13</p> <p>1 the position of President and/or CEO of Fifth Third</p> <p>2 Bank." Do you have any documents responsive to that</p> <p>3 request?</p> <p>4 A No.</p> <p>5 Q 1(d) requests, "Development of</p> <p>6 potential candidates for the position of President</p> <p>7 and/or CEO of Fifth Third." Do you have any documents</p> <p>8 responsive to that request?</p> <p>9 A No.</p> <p>10 Q 1(e) asks for, "Any facts upon</p> <p>11 which you or any other Director relied upon when</p> <p>12 identifying and/or selecting candidates for the</p> <p>13 position of President and/or CEO of Fifth Third Bank."</p> <p>14 Do you have any documents responsive to that request?</p> <p>15 A No.</p> <p>16 Q 1(f) asks for with respect to Phil</p> <p>17 McHugh in terms of communications between you and any</p> <p>18 board members. Do you have any documents responsive</p> <p>19 to that request?</p> <p>20 A No.</p> <p>21 Q 1(g) asks for communications</p> <p>22 between you and any other board member regarding</p> <p>23 Timothy Spence. Do you have any documents responsive</p> <p>24 to that request?</p> <p>25 A No.</p>	<p>Page 15</p> <p>1 responsive to that request?</p> <p>2 A No.</p> <p>3 Q 1(d) -- Excuse me -- 4(d) asks for,</p> <p>4 "Development of potential candidates for the position</p> <p>5 of President and/or CEO of Fifth Third." Do you have</p> <p>6 any documents pursuant to that request?</p> <p>7 A No.</p> <p>8 Q 4(e) asks for, "Any facts upon</p> <p>9 which You or any other Director relied upon when</p> <p>10 identifying and/or selecting candidates for the</p> <p>11 position of President and/or CEO of Fifth Third." Do</p> <p>12 you have any documents responsive to 4(e)?</p> <p>13 A No.</p> <p>14 Q 4(f) refers to Philip McHugh. Do</p> <p>15 you have any documents responsive to 4(f)?</p> <p>16 A No.</p> <p>17 Q And 4(g) asks for Timothy Spence.</p> <p>18 Do you have any documents responsive to 4(g)?</p> <p>19 A No.</p> <p>20 Q Are you currently employed?</p> <p>21 A No. I'm retired.</p> <p>22 Q Where did you last work?</p> <p>23 A Nationwide Insurance.</p> <p>24 Q When did you last work for</p> <p>25 Nationwide Insurance?</p>

<p>1 A Retired the end of 20 -- 2009 to 2 effective first day of 2010. 3 Q What was the last position you held 4 with Nationwide Insurance? 5 A Chief Financial Officer of the 6 Property/Casualty Insurance Segment. 7 Q Have you ever been the President or 8 CEO of a publicly traded company? 9 A No. 10 Q Do you sit on any boards currently? 11 A I do. 12 Q Which boards do you currently sit 13 on? 14 A Sit on Brighthouse Financial and I 15 sit on Arch Capital Group, both public companies, in 16 addition to Fifth Third, of course. 17 Q How long have you been on the board 18 of Brighthouse Financial? 19 A Since 20 -- let's see, 2018. 20 Q How long have you been on the board 21 of Arch Capital Group? 22 A Since 2021. 23 Q When did you first join the board 24 of Fifth Third? 25 A 2016, September.</p>	<p>Page 16</p> <p>1 Columbus College of Art & Design. I was previously on 2 that board as well and other nonprofits throughout my 3 career. 4 Q When were you on the board of 5 Columbus College of Art & Design? 6 A I believe that started in 2010 or 7 '11 and I stepped off that when I was -- other boards 8 were conflicting with it around 2019-ish. 9 Q Any other nonprofit boards that you 10 served on during the time period of September of 2016 11 through October, 2020? 12 A No. 13 Q Who first contacted you about 14 joining the board at Fifth Third? 15 A A recruiting firm connected with me 16 and then it was Marsha Williams and Greg Carmichael as 17 board members of Fifth Third. 18 Q When were you first contacted about 19 joining the board of Fifth Third? 20 A Oh, let's see now, if I joined in 21 '16 -- It was beginning of -- beginning of '16. It 22 took a few months to go through the process, so 23 probably mid '16 sometime. 24 Q What do you mean by it took a few 25 months to go through the process?</p> <p>Page 18</p>
<p>1 Q Between September of 2016 and 2 October of 2020 did you sit on any other boards that 3 you have not identified today? 4 A Yes. 5 Q Upon which boards did you sit? 6 A I was sitting on Bob Evans Farms. 7 Q When were you on the Bob Evans' 8 board? 9 A I joined that board in 2008 and 10 based off of an M&A transaction stepped off in 2018. 11 It was 10 years. 12 Q Any other boards? 13 A Yes, State Auto Financial. 14 Q And when were you a board member of 15 State Auto Financial? 16 A Starting 2010 and stepped off that 17 board in 2021. 18 Q Any others? 19 A Libbey Glass. 20 Q When were you a board member of 21 Libbey Glass? 22 A That was 2016 until 2020 when COVID 23 hit the -- that sector and was restructured. 24 Q Any other boards? 25 A No, other than nonprofit boards,</p> <p>Page 17</p>	<p>1 A The most humbling thing of when you 2 transition your career to serving on public boards is 3 it's not -- it doesn't move as quickly as when you're 4 on the management side of the table. It typically 5 takes a long process because of the importance of the 6 role of a public board member that they want to ensure 7 that no matter what your background as you will add 8 value on the two most important roles of a board of 9 director which is CEO succession as well as oversight 10 of the strategy. 11 Q And what specifically was done to 12 make sure that you could add to the processes of CEO 13 succession and oversight of the strategy? 14 A Well, as a public company CFO you 15 partner deeply with the CEO and it's always about the 16 strategy and over a course of my CFO roles, prior ones 17 as well with GE and Genworth as a CFO, I had strategy 18 as oversight as I did at Nationwide Insurance. I was 19 the one that developed a strategy leader for the 20 Property/Casualty Team there and hired in an 21 individual from Mackenzie to be the strategy leader, 22 not unlike what Greg Carmichael did in bringing 23 Tim Spence in from Oliver Wyman. 24 Q What specifically was done to 25 determine that you were in line or added value with</p> <p>Page 19</p>

<p>1 respect to CEO succession and oversight strategy at 2 Fifth Third?</p> <p>3 A It's just part of your business 4 judgment and your experience and where you're bringing 5 your wisdom from your years of experience.</p> <p>6 Q Is there an onboarding process for 7 individuals that become members of the board at 8 Fifth Third Bank?</p> <p>9 A Great question. In fact, every one 10 of the boards that I just referenced I'm a 11 National Association of Corporate Directors member and 12 they are continually doing training and discussions 13 around all the roles of a board member, so 14 Fifth Third, for example, provides that membership 15 with National Association of Corporate Directors. I 16 go annually to their global summit where I sit with a 17 non-governance, for example, our Audit Committee as an 18 Audit Committee Chair for one of the most current 19 trends, so you are constantly getting continual 20 education similar to what I do as a CPA in getting 21 continuing professional education credits there as 22 well.</p> <p>23 Q My question specifically what does 24 Fifth Third Bank do with respect to onboarding its new 25 board members?</p>	<p>Page 20</p>	<p>1 so it's not just learning about the business which 2 they're helping the new director understand 3 Fifth Third. You're starting to build your -- your 4 foundation as a public company director in assessing 5 the talent and capability of each leader.</p> <p>6 Q How many different Enterprise 7 Committee members did you meet with?</p> <p>8 A I cannot recall right now to be 9 honest with you. I don't remember off the top of my 10 head. But it's typically each of the functions, 11 operational, finance, risk, legal. You're meeting 12 with each of the key functions and operational 13 leaders.</p> <p>14 Q When did those meetings take 15 place?</p> <p>16 A It's -- It occurs initially over a 17 couple of days. You're brought into Fifth Third to 18 just meet with folks to kick off the orientation and 19 then based on each person's background -- Like for 20 myself I -- by being a finance executive I will spend 21 extra time with the finance leaders as well as with 22 the risk leaders just to ensure I'm understanding the 23 uniqueness of the business as I'm evaluating the 24 financial performance.</p> <p>25 Q Do you recall who you specifically</p>
<p>1 A Oh, well, you're onboarding as well 2 as equally robust in how you meet with each of the 3 leaders and you are taken through the business and 4 then you are equally onboard for the regulatory 5 element of Fifth Third which is quite significant as 6 you know in the banking sector, and all that plays 7 into how you want to evaluate CEO succession too.</p> <p>8 Q And so you said you meet with each 9 of the leaders?</p> <p>10 A Yes.</p> <p>11 Q Which leaders? Who are you 12 referring to?</p> <p>13 A Anyone that's in the Enterprise 14 Committee at that time because that moves depending on 15 the point in time you're asking the question. Back in 16 2016 you would have to look up who were the Enterprise 17 Committee leaders at that point in time.</p> <p>18 Q And what is the nature of that 19 meeting that you had with Enterprise Committee 20 members?</p> <p>21 A You're starting your most important 22 role as a public company director and gaining an 23 understanding of the strengths and capabilities of 24 each of the leaders, so you're seeing how well they 25 can articulate their business, what's their strategy,</p>	<p>Page 21</p>	<p>1 met with with respect to the financial time -- 2 financial side?</p> <p>3 A No.</p> <p>4 MR. CIOFFI: Objection, asked and 5 answered, but -- 6 BY MR. CIOFFI:</p> <p>7 Q What about with respect to the risk 8 side, who did you meet with?</p> <p>9 MR. CIOFFI: Same objection. You 10 may answer if you can.</p> <p>11 A Yeah, that was Frank Forrest at the 12 time, so I do remember him.</p> <p>13 Q And how much time did you spend 14 meeting with Mr. Forrest?</p> <p>15 A Well, again at least an hour, a 16 couple of hours, with each person.</p> <p>17 Q When you say a couple hours how 18 many hours is that?</p> <p>19 A Anywhere from an hour to two hours.</p> <p>20 Q Did you meet with Phil McHugh?</p> <p>21 A I don't recall.</p> <p>22 Q Did you meet with Tim Spence?</p> <p>23 A Yes.</p> <p>24 Q Who determined who you would meet 25 with?</p>

<p>1 A Legal team as part of where they Page 24</p> <p>2 administratively oversee onboarding new directors.</p> <p>3 Q How much time did you spend meeting</p> <p>4 with Mr. Spence?</p> <p>5 A I think it was about an hour.</p> <p>6 Q Did you keep notes from that</p> <p>7 meeting?</p> <p>8 A No. They provide the materials and</p> <p>9 it's really asking questions off the materials</p> <p>10 provided to help onboard you.</p> <p>11 Q What were the nature of the</p> <p>12 materials that they provided you?</p> <p>13 A I am not going to recall all the</p> <p>14 details in each of the materials, but it follows that</p> <p>15 Tim Spence would be strategy, Frank Forrest would be</p> <p>16 risk, legal would be governance and regulation, so I</p> <p>17 don't recall the exact specifics.</p> <p>18 Q If you first came on in September</p> <p>19 of 2016 how long after were these meetings that you</p> <p>20 would have had with different representatives of the</p> <p>21 Enterprise Committee?</p> <p>22 A Can you repeat that question?</p> <p>23 Q Yes. If -- Relative to your start</p> <p>24 date as a board member in September of 2016 when would</p> <p>25 these meetings have taken place?</p>	<p>1 Q -- that you met with? Page 26</p> <p>2 A Tayfun, the CFO, Mark Hazel, the</p> <p>3 Controller at the time. I'm horrible with names</p> <p>4 because the person's gone, so whomever was meeting</p> <p>5 legal because they were going through a lot of</p> <p>6 transition at that point. And then the operation</p> <p>7 folks because I'm bad with names I would have to look</p> <p>8 at an enterprise chart to share with you at that point</p> <p>9 in time who else I met with.</p> <p>10 Q As a board member of Fifth Third</p> <p>11 what was your understanding of your role with respect</p> <p>12 to President and CEO succession?</p> <p>13 A I -- Can you just phrase that</p> <p>14 question one more time, please?</p> <p>15 Q Sure. As a board member of</p> <p>16 Fifth Third what was your understanding of your role</p> <p>17 with respect to President and CEO succession?</p> <p>18 A So in order to properly respond to</p> <p>19 that by virtue of all the public company boards I</p> <p>20 listed that I serve on you should know that I have</p> <p>21 served on CEO transition of five out of those six</p> <p>22 boards, and I do not think of one particular company's</p> <p>23 basis for how I think of CEO succession. I view it as</p> <p>24 the most critical role of a board director is CEO</p> <p>25 succession and the strategic oversight, so it's truly</p>
<p>1 A I think I already answered that, Page 25</p> <p>2 but it would be within -- before the first board</p> <p>3 meeting you're already meeting with folks as soon as</p> <p>4 you're brought on board, so it's within a month or two</p> <p>5 of you're sworn in as a board member.</p> <p>6 Q Okay. The first board meeting that</p> <p>7 there's a record of you attending is in September</p> <p>8 of --</p> <p>9 A Yes.</p> <p>10 Q -- 2016. Do you recall if those</p> <p>11 meetings were prior to that board meeting?</p> <p>12 A Yes.</p> <p>13 Q As you sit here today do you recall</p> <p>14 how long prior to that board meeting that these</p> <p>15 meetings took place?</p> <p>16 A It was around that board meeting.</p> <p>17 Q Other than meeting with some of the</p> <p>18 members of the Enterprise Committee what else was</p> <p>19 involved in the onboarding process for you to become a</p> <p>20 board member of Fifth Third?</p> <p>21 A That's it.</p> <p>22 Q As you sit here today other than</p> <p>23 Mr. Spence and Frank Forrest do you recall the names</p> <p>24 of any other enterprise board members --</p> <p>25 A I do.</p>	<p>1 assessing, just always assessing in every interaction Page 27</p> <p>2 I have with each of the leaders. To your good point</p> <p>3 on starting on Day 1 when it's onboarding, that's like</p> <p>4 I'm starting to assess the capabilities of each leader</p> <p>5 so I can provide credible challenge back to management</p> <p>6 as management is asking questions and have a view of</p> <p>7 who might be potential CEO successors, so it's not</p> <p>8 unique to Fifth Third. I'd have that process with</p> <p>9 every public company board I serve on.</p> <p>10 Q And specific to Fifth Third you</p> <p>11 referred to with respect to your interaction with each</p> <p>12 of the leaders you're assessing whether or not they</p> <p>13 have the capabilities --</p> <p>14 A Correct.</p> <p>15 Q -- to be a President and CEO?</p> <p>16 With respect to Fifth Third in</p> <p>17 particular who are the leaders you're referring to?</p> <p>18 A When I come in as a new board</p> <p>19 member it can be any leader and I do not bias which</p> <p>20 leader it would be. It's based off of the</p> <p>21 interactions and observing the capabilities of each of</p> <p>22 the leaders.</p> <p>23 Q Is Phil McHugh included in the</p> <p>24 description of the leaders that you would be assessing</p> <p>25 with respect to having the capabilities to be a CEO or</p>

<p>Page 28</p> <p>1 President of Fifth Third Bank?</p> <p>2 A He was.</p> <p>3 Q And when did that assessment</p> <p>4 process begin?</p> <p>5 A Again Day 1 and whenever I started</p> <p>6 to interact so -- because I couldn't remember what</p> <p>7 operation leaders would be there -- whenever I saw</p> <p>8 Phil at a board meeting or interacted with him at a</p> <p>9 board dinner.</p> <p>10 Q Other than interactions at a board</p> <p>11 meeting or board dinner what other interactions did</p> <p>12 you have with Phil McHugh in order to assess him for</p> <p>13 the roles of President and/or CEO of Fifth Third Bank?</p> <p>14 A I would just get in a cocktail hour</p> <p>15 in between -- between the board meeting and the board</p> <p>16 dinner.</p> <p>17 Q Anything else?</p> <p>18 A No.</p> <p>19 Q Did you ever observe Phil McHugh in</p> <p>20 the workplace?</p> <p>21 A I'm not understanding your</p> <p>22 question.</p> <p>23 Q Did you ever observe Phil McHugh at</p> <p>24 work at Fifth Third Bank?</p> <p>25 A No, other than a board meeting</p>	<p>Page 30</p> <p>1 annually as a board looking at each of the executives'</p> <p>2 performance as prepared by the CEO? Is that what</p> <p>3 you're referencing?</p> <p>4 Q I am specifically asking for did</p> <p>5 you review any of the documentation that were from the</p> <p>6 annual reviews that were done of Phil McHugh from his</p> <p>7 immediate supervisor?</p> <p>8 A No, unless you're referencing what</p> <p>9 we look at as succession planning.</p> <p>10 Q Okay. You're -- You're referring</p> <p>11 to something called the talent deck?</p> <p>12 A Yes.</p> <p>13 Q Have you ever heard that phrase?</p> <p>14 A Yes.</p> <p>15 Q Is that correct?</p> <p>16 All right. And just to be clear</p> <p>17 that -- the talent deck is something the board would</p> <p>18 review at December meetings --</p> <p>19 A Correct.</p> <p>20 Q -- each year; is that right?</p> <p>21 Okay. And so the talent deck would</p> <p>22 be a document that you would review as part of your</p> <p>23 assessment of an individual to be a President or CEO</p> <p>24 at Fifth Third Bank; is that right?</p> <p>25 A No.</p>
<p>Page 29</p> <p>1 which is work.</p> <p>2 Q Outside of the board meeting?</p> <p>3 A No.</p> <p>4 Q Did -- Do you have a recollection</p> <p>5 of what Phil McHugh's role was when you came on in</p> <p>6 September of 2016?</p> <p>7 A Retail Consumer Bank, something</p> <p>8 along those lines, because the segments had been</p> <p>9 realigned so you'll have to forgive me if I can't</p> <p>10 recall the exact title. We now just have three</p> <p>11 segments for commercial, consumer, and retail banking</p> <p>12 and WAM, and those are the ones I focus on as I'm</p> <p>13 reviewing current financials, so something within the</p> <p>14 consumer -- and he had WAM too as an element.</p> <p>15 Q Did you ever meet with or interview</p> <p>16 any of Phil McHugh's direct reports?</p> <p>17 A No.</p> <p>18 Q Did you ever participate in or</p> <p>19 perform any of Phil McHugh's annual reviews or</p> <p>20 mid-year reviews?</p> <p>21 A No.</p> <p>22 Q Did you review any of the</p> <p>23 documentation from Phil McHugh's annual reviews?</p> <p>24 A Expand your question to make sure</p> <p>25 I'm answering. Are you referencing what we do</p>	<p>Page 31</p> <p>1 Q That would not be?</p> <p>2 A No.</p> <p>3 Q What would you use the talent deck</p> <p>4 for?</p> <p>5 A I would look at the talent deck</p> <p>6 even in my assessment of the existing CEO's</p> <p>7 capabilities of how you're evaluating talent because</p> <p>8 that's the opinion of management when I review that.</p> <p>9 I immediately look at it to see if it's lining up to</p> <p>10 how I'm thinking about the individual and then during</p> <p>11 the discussion I provide credible challenge to ask</p> <p>12 where I don't agree necessarily with what's on the</p> <p>13 page and that's again part of the role of a board of</p> <p>14 director.</p> <p>15 Q Did you ever review any of</p> <p>16 Phil McHugh's employee engagement surveys?</p> <p>17 A No.</p> <p>18 Q Did you ever review any of</p> <p>19 Phil McHugh's customer experience surveys?</p> <p>20 A No.</p> <p>21 Q Did you ever review the financial</p> <p>22 performance relative to the goals for Phil McHugh's</p> <p>23 divisions?</p> <p>24 A Yes.</p> <p>25 Q And when did you review those?</p>

<p>1 A When he presents them at the board 2 meetings. 3 Q Okay. And what -- what 4 specifically was presented at the board meetings? 5 A He presented a summary of his line 6 of business operations. 7 Q Okay. And what is your 8 recollection of what he provided? 9 A Performance of his area at that 10 point in time. 11 Q And was there anything that you 12 were critical of with respect to the financial 13 performance of the areas that were managed by 14 Phil McHugh? 15 A I was in listen mode only. When 16 you talk in executive session is when we talk about 17 how we felt certain leaders performed during their 18 presentation. 19 Q With respect to the financial 20 performance of the divisions managed by Phil McHugh 21 were there any criticisms of the financial performance 22 of the divisions managed by Phil McHugh? 23 A No, because again I am audit chair 24 and I look at the financial statements for the 25 segments. He's reflecting only a management report</p>	Page 32	<p>1 It's either at a board meeting where they may have 2 presented, at a dinner that they may have attended, or 3 at a cocktail party in between the dinner and a board 4 meeting -- 5 A Correct. 6 Q -- is that right? 7 Do you recall specifically how many 8 times you observed Phil McHugh at a board meeting? 9 A I don't believe he presented at 10 every single meeting, so you would have to shave off a 11 couple, but if you just do 5 meetings a year times 4 12 from the '16 to '19 point we're talking here or mid 13 '20, 2020, I mean they can just do the math on that, 14 and that's how many times I interacted with Phil as a 15 board member observing his presentation. 16 Q Okay. So -- And that's if he would 17 have attended every meeting? 18 A If he was at every meeting because 19 sometimes he was not there. 20 Q Correct. So it would be a maximum 21 of 20 interactions -- 22 A Yes. 23 Q -- over a four-year period -- 24 A Yeah. 25 Q -- is that correct?</p>
<p>1 that does not necessarily tie to the financial 2 statements, so that's a limited view of the total 3 financial story of Fifth Third Bank, so I'm just 4 gaining a better understanding so I can ask questions 5 when I see the total rollup if it's consistent to what 6 Phil may have said in a board meeting to how the 7 finance team is reflecting the financial result in a 8 10-Q or a 10-K. 9 Q Other than a more global view that 10 you're taking with respect to what the financial 11 rollup is -- 12 A Uh-huh. 13 Q -- are you assessing any candidates 14 based on their specific divisions of the bank and the 15 financial performance of those divisions? 16 A Always. 17 Q And what are you using to do that? 18 A In part their presentation at a 19 board meeting and then all of their capabilities 20 associated with communicating what's performing at the 21 -- at their particular line of business so their 22 communication skills in addition to what they're 23 showing as the results. 24 Q And your only observation or 25 communication skills is what you indicated before --</p>	Page 33	<p>1 A Yes. 2 Q Did you ever make a determination 3 that Phil McHugh was not a suitable candidate for 4 either President or CEO at Fifth Third Bank? 5 A I never saw him as a candidate for 6 CEO succession at a certain point during my time 7 interacting with Phil. 8 Q And at what point in time did you 9 determine that he was not a candidate for President or 10 CEO of Fifth Third Bank? 11 A The better way to -- to -- for me 12 to answer that is that I just stopped putting my 13 energy and focus on the person who's exhibiting the 14 highest potential, and so let me just pause and give 15 you a full quadrant view of how I think about this. 16 I'm always looking at every leader as having either 17 oversight, hindsight, foresight, or insight. 18 Oversight and hindsight is a traditional leader who 19 nuts and bolts very valuable for the organization but 20 not strategic. I look at a strategic leader with over 21 -- with insight and foresight. 22 Phil is a traditional banker with 23 deep Fifth Third internal knowledge for many years, 24 but in any of the board presentations I observed he 25 did not exhibit any strategic perspective. He really</p>

<p>Page 36</p> <p>1 just was giving -- reading off the slide, telling us 2 what occurred in the business, not really giving us 3 insight as to what is it that he was seeing based off 4 of what's occurred, and it -- really we're all assumed 5 to have read the slide so he needs to come in and 6 really just make it a dialogue and give us some color 7 to help bring that page alive even further than we -- 8 what we read on data on a pre-read of what is a 9 performance review effectively.</p> <p>10 Q So with respect to that did you 11 make that determination after the first presentation 12 made by Phil McHugh?</p> <p>13 A No. I always give someone for 14 additional opportunity because you have a bad day. It 15 was just his personal style.</p> <p>16 Q Okay. And how many -- how many 17 opportunities did you give Phil McHugh before you 18 determined that he was not a suitable candidate for 19 President or CEO of Fifth Third Bank?</p> <p>20 A I would say of the 20 that -- 21 number that you estimated I was about around 10 I was 22 already making that decision.</p> <p>23 Q And that's assuming you had 10 24 interactions with him over that time period; is that 25 correct?</p>	<p>Page 38</p> <p>1 there quite frankly. It was either in late '19 or mid 2 2020. I don't remember which one.</p> <p>3 Q By that point in time had you 4 already determined that Phil McHugh was not a suitable 5 candidate to be the next President and CEO of 6 Fifth Third Bank?</p> <p>7 A Yes, because we were already well 8 down the path of watching Tim Spence develop as the 9 future CEO.</p> <p>10 Q You said you were already well down 11 the path of watching Tim Spence becoming next 12 President and CEO of Fifth Third Bank. When did that 13 path begin?</p> <p>14 MR. CIOFFI: Objection to the form 15 of the question. It misstates her prior 16 testimony. If you can answer you may answer.</p> <p>17 A Repeat the question.</p> <p>18 Q Sure. You indicated that, "We were 19 already well down the path of determining that Fifth 20 -- that Tim Spence would be the next President and CEO 21 of Fifth Third Bank." My focus is really on your 22 reference to the path with respect to Tim Spence. 23 When did that path begin?</p> <p>24 MR. CIOFFI: It's the same 25 objection.</p>
<p>Page 37</p> <p>1 A Yes.</p> <p>2 Q Ms. Mallesch, how many board 3 meetings did you attend in 2016?</p> <p>4 A Well, in 2016 I would have just 5 joined that board so that's September and then we 6 would have had a December meeting, so really it was 7 only a partial year.</p> <p>8 Q And do you recall if you had any 9 interactions with Phil McHugh during those?</p> <p>10 A I -- Frankly it's a blur when 11 you're starting to meet people for the first time, so 12 I do not remember.</p> <p>13 Q And with respect to the meetings 14 where Phil McHugh was in attendance did you interact 15 with him at each of those meetings?</p> <p>16 A Not an interaction. He would come 17 in and folks would say "hello" to each other, but that 18 would be it.</p> <p>19 Q So at these meetings you wouldn't 20 necessarily be having a conversation with him at 21 dinner or at the cocktail party; is that correct?</p> <p>22 A I only recall one dinner where we 23 sat next to each other and really talked at length.</p> <p>24 Q When was that dinner?</p> <p>25 A One of the last dinners Phil was</p>	<p>Page 39</p> <p>1 A Again my path is what I shared with 2 you, so if we did 20 meetings and I said into No. 10 I 3 didn't see Phil as a CEO successor the logical 4 follow-through is that I was seeing another internal 5 candidate, so I was already watching. This would be 6 where we're in executive session as a board and I 7 would say, "I cannot believe how Tim Spence can just 8 answer these questions off the cuff, gives us insight 9 on the strategy. How are we making sure we're 10 developing this guy and we're preserving him?"</p> <p>11 That's the type of well on your 12 path example that was occurring. There was nothing in 13 writing. It was executive session discussions. 14 Because again if as a director our most important role 15 is ensuring we have CEO succession it's critical we're 16 talking about this as part of every one of our 17 executive sessions as a way to recap the meeting, who 18 did we see perform well, who did we see that, gosh, 19 what -- how are you coaching this individual, I need 20 more help. There's -- The one thing I will say that 21 was always frustrating with a number of the leaders at 22 Fifth Third is we'd say in executive session, "Please 23 coach them not to read off their slides. They know 24 their business. Help us see what they know and get us 25 more comfortable with their capabilities."</p>

<p>1 And quite frankly Phil fell in that 2 camp of where we were asking for, "Give him feedback. 3 Don't just read off the slide. Help us better 4 understand where your insights are about the 5 business." 6 Q With respect to Tim Spence when did 7 those executive sessions occur during which it was 8 commented that, "Tim Spence, we need to develop this 9 guy to be the next President and CEO"? 10 A Quite frankly from my entire time 11 at Fifth Third we were always just so impressed with 12 him that I was even surprised to hear how being a 13 brand new board member that he was already being 14 referenced as a potential long-term -- Remember this 15 is 2016 -- as having years to develop that I said, "I 16 got to pay attention here," because, yeah, it -- it 17 was impressive to hear so many board members speak so 18 highly about a particular leader, and Greg was equally 19 a proponent of saying, "Tim was a quick study, always 20 seeking feedback, wanted to grow and learn." That's 21 how -- and he would even caution, "We just got to help 22 develop him." 23 Q By Greg you're referring to 24 Greg Carmichael; is that right? 25 A Yes.</p>	<p>Page 40</p> <p>1 board between September of 2016 and October of 2020 2 who ran the board meetings? 3 A Well, in 2016 Marsha Williams would 4 have been the chairperson at that point in time. I'm 5 failing to recall at what point we gave Greg 6 Carmichael the chairmanship, so it would be up until 7 that date, but she was still quite active in running 8 the board meetings as the lead independent director. 9 Q Okay. And after Greg Carmichael 10 took over as the chairman of the board he ran the 11 board meetings; is that correct? 12 A Well, he -- the chairman -- 13 chairman always kicks off the meeting and does that, 14 but still this is a very engaged active -- active 15 board. It was more a formality than anything else by 16 Marsha's style and Greg's style. This was a very 17 engaged board. So why I am expanding on that is 18 because a good board is always providing credible 19 challenge, so just not letting a CEO who's now an 20 executive CEO chairman run the board because you have 21 to have that healthy skepticism to ensure you're 22 protecting all the shareholders. 23 Q Who would determine the agenda for 24 the board meetings? 25 A Oh, in the executive session we</p> <p>Page 42</p>
<p>1 Q What was the nature of your 2 relationship with Greg Carmichael? 3 A Professional. 4 Q How often did you communicate with 5 Greg Carmichael during the period of September, 2016, 6 through October of 2020? 7 A Infrequently until it was April of 8 2020 because then I was asked to be the audit chair 9 and it was COVID and there was a lot going on, but it 10 was entirely related around the pay -- paycheck 11 protection plan and all of the efforts that were going 12 on across Fifth Third because, of course, there were a 13 lot of concerns that we were doing it right and 14 ensuring we weren't making mistakes and how that 15 translated into internal control, so prior to April of 16 2020 very rarely because I was not in a leadership 17 role outside of the board meetings or a board dinner 18 or a cocktail hour. 19 Q Okay. So just so I understand your 20 answer outside of a board meeting, board dinner, or 21 cocktail hour you didn't have much conversation or 22 communications with Mr. Carmichael until April of 23 2020; correct? 24 A Correct. 25 Q During your time period on the</p> <p>Page 41</p>	<p>1 would say to Marsha as the lead director once Greg was 2 chair, "Please make sure this is included on the next 3 agenda," and there would be quite verbal as part of 4 our closing executive session in how she would give 5 him feedback. 6 Q And who would determine the 7 documents that would be presented at a board meeting? 8 A Oh, management is ultimately 9 replying to the best of their ability to any requests 10 from management. 11 Q Who would determine who would -- 12 who would present from management at the board 13 meetings? 14 A I don't know because I'm not 15 chairman, so that might have been a discussion between 16 the chairman and the lead independent director. 17 Q But you don't know one way or 18 another; is that right? 19 A No. That would not be part of what 20 I'm doing as a postmortem as a -- as an audit chair. 21 Q You mentioned the one meeting you 22 had with Tim Spence when you were being onboarded? 23 A Uh-huh. 24 Q Did you have any other meetings 25 with Tim Spence outside board meetings, cocktail</p> <p>Page 43</p>

<p>1 hours, and board dinners?</p> <p>2 A No.</p> <p>3 Q Did you ever meet with any of Tim</p> <p>4 Spence's direct reports?</p> <p>5 A The only one is Ben -- What's Ben's</p> <p>6 last name again? I'm trying to remember Ben's last</p> <p>7 name.</p> <p>8 Q Are you referring to Ben Hoffman?</p> <p>9 A Ben Hoffman. Thank you.</p> <p>10 Q And when did you meet with Ben</p> <p>11 Hoffman?</p> <p>12 A At a cocktail hour that was a skip</p> <p>13 level so that's why to answer your question, but that</p> <p>14 was still a cocktail hour.</p> <p>15 Q And did you specifically discuss</p> <p>16 Tim Spence with Ben Hoffman?</p> <p>17 A No.</p> <p>18 Q Did you ever -- ever observe</p> <p>19 Tim Spence in the workplace outside a board meeting,</p> <p>20 cocktail hour, or board dinner?</p> <p>21 A No.</p> <p>22 Q Did you ever participate in or</p> <p>23 perform any of Tim Spence's annual reviews or mid-year</p> <p>24 reviews?</p> <p>25 A No.</p>	<p>Page 44</p>	<p>1 Q Upon which other committees did you</p> <p>2 sit for Fifth Third Bank?</p> <p>3 A Human Capital & Compensation,</p> <p>4 Risk & Compliance, and then once I became audit chair</p> <p>5 for the Audit Committee you also serve on the</p> <p>6 Finance Committee as that represents all chairs of all</p> <p>7 other committees.</p> <p>8 Q With respect to being on the</p> <p>9 Human Capital/Compensation Committee did you have any</p> <p>10 involvement in determining the emergency successor</p> <p>11 process for President/CEO at Fifth Third?</p> <p>12 A Other than observing management's</p> <p>13 recommendation and being a committee member, no.</p> <p>14 Q Do you recall if the HCCC had a</p> <p>15 responsibility for determining the emergency successor</p> <p>16 process for President and CEO of Fifth Third Bank?</p> <p>17 A Rephrase that question, please.</p> <p>18 Q Sure. The Human Capital/</p> <p>19 Compensation Committee, do you recall if they had a</p> <p>20 responsibility for determining the emergency</p> <p>21 successor process for President and CEO at Fifth Third</p> <p>22 Bank?</p> <p>23 A Okay. So let me just provide some</p> <p>24 context. If the board member's primary responsibility</p> <p>25 is CEO succession, one of the two primary that I have</p>
<p>1 Q Have you seen any of the</p> <p>2 documentation from Tim Spence's annual reviews?</p> <p>3 A Other than what you referenced</p> <p>4 earlier as the talent deck, no.</p> <p>5 Q Did you ever see Tim Spence's</p> <p>6 employee engagement surveys?</p> <p>7 A No.</p> <p>8 Q Did you ever see Tim Spence's</p> <p>9 customer experience surveys?</p> <p>10 A No.</p> <p>11 Q Did you ever see the individual</p> <p>12 financial performance relative to goals for Tim</p> <p>13 Spence's divisions?</p> <p>14 A Well, when he had line of business,</p> <p>15 yes, but he was strategy initially so it was more</p> <p>16 about executing on strategic initiatives that crossed</p> <p>17 all of the lines of business, so the performance would</p> <p>18 be KPIs to a strategic initiative and that would be</p> <p>19 yes.</p> <p>20 Q You mentioned the Audit Committee;</p> <p>21 correct?</p> <p>22 A Correct.</p> <p>23 Q That you were an audit chair</p> <p>24 beginning in April of 2020; is that right?</p> <p>25 A Yes.</p>	<p>Page 45</p>	<p>1 referenced continually, the second being strategic</p> <p>2 oversight, then the work, the heavy lifting, is done</p> <p>3 in a committee. The Human Capital & Compensation</p> <p>4 Committee in its governance and fiduciary role has the</p> <p>5 oversight of ensuring there is a CEO succession, so</p> <p>6 that committee is who pushes management to say, "We</p> <p>7 need your perspective of who you think would be</p> <p>8 interim CEO and any of several CEO Interim Emergency</p> <p>9 Succession Plans," and based off of that we as a</p> <p>10 committee review it and because that's a full board</p> <p>11 responsibility it's why it's part of equally the</p> <p>12 December discussion that occurs on the overall talent</p> <p>13 review and we then speak in executive committee</p> <p>14 amongst ourselves whether we agreed fully or not with</p> <p>15 what management proposed.</p> <p>16 (Deposition Exhibit 2 was marked</p> <p>17 for identification.)</p> <p>18 BY MR. SABA:</p> <p>19 Q Ms. Mallesch, I have handed you</p> <p>20 what's been marked as Exhibit No. 2. I will represent</p> <p>21 to you this document is Bates stamped, and by Bates</p> <p>22 stamped I'm referring to the numbering in the bottom</p> <p>23 right-hand corner --</p> <p>24 A Uh-huh.</p> <p>25 Q -- of the first page. The first</p>

<p>1 page is Bates stamped FIFTHTHIRD-MCHUGH-006592 and the 2 last page should be Bates stamped 3 FIFTHTHIRD-MCHUGH-006604 -- Do you see that? 4 A I do. 5 Q Is that accurate for the document 6 that you have in front of you? 7 A It is. 8 Q Okay. Are you able to identify the 9 first two pages of Exhibit No. 2 for me, please? 10 A The first page it looks like an 11 email from Saema to it looks to me to be the committee 12 members at the time of Human Capital & Compensation, 13 yeah, an email. 14 Q And your email's one of the emails 15 we see there, is that correct, on the first page, 16 emallesch@gmail.com; is that correct? 17 A That's why I said it's the 18 Human Capital Committee members, Mike, myself, Nick, 19 Gary. 20 Q And this is from September 11th, 21 2018; is that correct? 22 A Correct. 23 Q Okay. And the email indicates, 24 "Attached please find the materials for the CEO 25 Emergency Succession Plan discussion"; is that</p>	<p>Page 48</p> <p>1 Q Thank you. 2 Beginning at 006598 through 006604 3 that portion is entitled "Human Capital & Compensation 4 Committee Executive Session 'Break The Glass' Toolkit" 5 dated September 17th, 2018 -- Do you see that? 6 A Yes. 7 Q Okay. Can you explain to me 8 what -- what this document sets forth? 9 A Again it's -- If you're a director 10 and you're looking at the Communication Elements that 11 were reflected in the prior pages of 006594 through 12 006597 now the next logical question a director wants 13 to see is, Okay. How are you thinking that through? 14 What's your logic thread of what occurs, and that's 15 why management responded to our request by providing 16 those subsequent pages. 17 Q And so these subsequent pages, do 18 these set forth the Emergency CEO Succession Process 19 at Fifth Third? 20 A It's my understanding, yes. 21 Q Take me through the process of how 22 this was adopted as the Emergency CEO Succession 23 Process of Fifth Third Bank in 2018? 24 A It's right on the pages. 25 Q No. My question more goes to you.</p> <p>Page 50</p>
<p>1 correct? 2 A Correct. 3 Q And then can you identify for me 4 what we see marked as FIFTHTHIRD-MCHUGH-006594 through 5 the balance of Exhibit 2, FIFTHTHIRD-MCHUGH-006604? 6 A It appears to be the various 7 scenarios I have referenced on what we do at our 8 oversight role of interim CEO succession on an 9 emergency basis and scenarios provided. 10 Q Beginning with 006594 through 11 006597 the title page for those pages is 12 Communication Elements -- Do you see that? 13 A I do. 14 Q Can you explain to me what that 15 particular document is? 16 A This is as its subsequent pages 17 reflect where we have to provide regulatory 18 notification on any of the scenarios and how many days 19 we have to do that. 20 Q And by the scenarios you're 21 referring to the different scenarios where a CEO may 22 leave suddenly and have to be replaced; is that 23 correct? 24 A And to be very explicit on your 25 Page 006597 the scenarios are provided, yes.</p> <p>Page 49</p>	<p>1 This was obviously presented to the Human Capital & 2 Compensation Committee in September, 2018; is that 3 correct? 4 A Yes. 5 Q And so what does the Human Capital/ 6 Compensation Committee do? They review this packet; 7 is that right? 8 A Yes. 9 Q All right. And you would determine 10 if you agree with all the information set forth in the 11 packet; is that right? 12 A We just review this and say, 13 "Management has a plan," and that's all we do is then 14 we go into private session and we discuss whether we 15 support fully how they're thinking of -- Like, for 16 example, why don't we go to 006603 on Scenario 2, 17 Potential Management Candidates, Tayfun and Frank 18 Forrest. 19 Q Okay. 20 A So we're just going to review and 21 say, "Does that make sense?" It makes sense at that 22 point in time. 23 Q Okay. And so Human Capital & 24 Compensation Committee does that in executive session. 25 Is this then presented to the full board for review</p> <p>Page 51</p>

<p>1 and approval?</p> <p>2 A In December.</p> <p>3 Q Okay. And did that happen?</p> <p>4 A The minutes would reflect if it</p> <p>5 happened.</p> <p>6 Q As you sit here today do you recall</p> <p>7 that?</p> <p>8 A I don't recall.</p> <p>9 Q Okay.</p> <p>10 A We'd have to go to the minutes.</p> <p>11 Q Okay. You referred specifically to</p> <p>12 the Potential Management Candidates we see on</p> <p>13 FIFTHTHIRD-MCHUGH-006603, correct --</p> <p>14 A Yes.</p> <p>15 Q -- Tayfun Tuzun and Frank Forrest?</p> <p>16 Did you review anything else with</p> <p>17 respect to the Emergency CEO Succession Plan?</p> <p>18 A No. This is the document we review</p> <p>19 as a committee doing the work before it's presented to</p> <p>20 the full board.</p> <p>21 Q And my question is you -- you</p> <p>22 highlighted the information of Tayfun Tuzun and</p> <p>23 Frank Forrest. I'm asking is that the only thing that</p> <p>24 you look at or do you look at the entire plan?</p> <p>25 A Oh, the entire document.</p>	Page 52	<p>1 (Deposition stood in recess at</p> <p>2 10:56 a.m.)</p> <p>3 (Deposition reconvened at</p> <p>4 11:15 a.m.)</p> <p>5 THE VIDEOGRAPHER: We are back on</p> <p>6 the record. This is Media 2 of today's</p> <p>7 deposition. The time is 11:15.</p> <p>8 BY MR. SABA:</p> <p>9 Q Ms. Mallesch, you mentioned there</p> <p>10 would have been cocktail parties where you observed</p> <p>11 Phil McHugh. At how many of the cocktail parties did</p> <p>12 you speak to Phil McHugh?</p> <p>13 A I do not recall.</p> <p>14 Q Do you recall anywhere you spoke to</p> <p>15 Phil McHugh?</p> <p>16 A I only really recall the dinner I</p> <p>17 referenced where we were sitting next to each other.</p> <p>18 Q Other than that you have no other</p> <p>19 specific recollection of Phil McHugh at a dinner or a</p> <p>20 cocktail party?</p> <p>21 A Correct.</p> <p>22 MR. SABA: Mark that as 3, please.</p> <p>23 (Deposition Exhibit 3 was marked</p> <p>24 for identification.)</p> <p>25 MR. SABA: And 4.</p>
<p>1 Q Okay. Do you know if the</p> <p>2 Emergency CEO Succession Plan, is that approved in</p> <p>3 executive session or is that approved in resolutions</p> <p>4 at a board -- at the final board meetings in December?</p> <p>5 A I do not recall. You'd have to go</p> <p>6 to the minutes.</p> <p>7 Q How long did you remain on the</p> <p>8 Fifth Third Human Capital & Compensation Committee?</p> <p>9 A I was on that from 2016 until --</p> <p>10 Let's see, we're in 2024. I think I came off last</p> <p>11 year, either April of 2023 or the prior year -- I'm</p> <p>12 forgetting which -- but it was well after Phil left.</p> <p>13 Q Would the -- How -- How frequently</p> <p>14 would the Human Capital & Compensation Committee</p> <p>15 review the Emergency Successor Plan for Fifth Third</p> <p>16 Bank?</p> <p>17 A Annually.</p> <p>18 Q And would that be in preparation</p> <p>19 for the December meeting each year?</p> <p>20 A Correct.</p> <p>21 MR. SABA: We can go off the</p> <p>22 record.</p> <p>23 THE VIDEOGRAPHER: Off the record</p> <p>24 10:56.</p> <p>25</p>	Page 53	<p>1 (Deposition Exhibit 4 was marked</p> <p>2 for identification.)</p> <p>3 BY MR. SABA:</p> <p>4 Q Ms. Mallesch, I have handed you</p> <p>5 what's been marked as Exhibits 3 and 4. Exhibit 3 is</p> <p>6 Bates stamped 001104. Can you identify that document</p> <p>7 for me, please?</p> <p>8 A It's an email communicating the</p> <p>9 final executive talent management update it looks like</p> <p>10 dated 2019.</p> <p>11 Q And that was for the board meeting</p> <p>12 on September 17, 2019; is that correct?</p> <p>13 A Correct.</p> <p>14 Q And Exhibit No. 4 is titled "Board</p> <p>15 of Directors Human Capital and Executive Talent</p> <p>16 Management and Succession Plan Updates" Bates stamped</p> <p>17 FIFTHTHIRD-MCHUGH-001105 through</p> <p>18 FIFTHTHIRD-MCHUGH-001154; is that correct?</p> <p>19 A Correct.</p> <p>20 Q Can you identify Exhibit 4 for me,</p> <p>21 please?</p> <p>22 A It's the referenced email, the</p> <p>23 attachment of the Human Capital and Executive Talent</p> <p>24 Management and Succession Plan Update, for the</p> <p>25 December, 2019, meeting.</p>

<p>1 Q And this is what we have referred 2 to as the talent deck; is that correct? 3 A Correct. 4 Q You have heard that reference 5 before; is that right? 6 A That is correct. 7 Q Okay. And this would have been for 8 the particular board meeting on December, 2000 -- 9 December 17th, 2019; is that right? 10 A Correct. 11 Q Okay. How is this document, 12 Exhibit No. 4, used at a board meeting? 13 A We will all have pre-read it before 14 coming and by virtue of our primary role in CEO 15 succession look at each of the leaders and assess how 16 management -- because this is entirely a management 17 document how management views each of the executives. 18 Q And do you review the entire talent 19 deck packet? 20 A I do. 21 Q What will the board then do with 22 this talent deck after reviewing it for the 23 information provided by management? 24 A We dedicate a whole morning with 25 the CEO and the head of Human Capital & Compensation</p>	Page 56	<p>1 time, Chief Human Resources Officer; correct? 2 A Correct. 3 Q Okay. And that's who would have 4 gone through this information, the talent deck, with 5 the board, Mr. Shaffer, and Mr. Carmichael; correct? 6 A Correct. 7 Q Okay. Is that done in executive 8 session or is that done in the regular part of the 9 board meeting? 10 A It's a special executive session 11 that kicks off the whole day. It's considered part of 12 the board meeting, but it's -- the only management 13 there is Greg Carmichael and as you corrected me 14 Bob Shaffer for his role at the time as the people 15 leader. 16 Q If I can refer you to 17 FIFTHTHIRD-MCHUGH-001151 -- 18 A I am there. 19 Q Are you on that page? 20 A (Nodding head.) 21 Q And FIFTHTHIRD-MCHUGH-001151 refers 22 to the Emergency CEO Succession Plan Communication 23 Elements; is that correct? 24 A Correct. 25 Q And that goes through</p>
<p>1 at the time, and I am failing to remember if it was 2 Teresa Tanner at that -- still at that time or someone 3 else. I don't think on the email it would say who was 4 the HR leader, so forgive me for forgetting who was 5 the HR leader at this -- for this meeting. But, 6 though, Greg and the -- that individual takes us 7 through their perspective and we provide credible 8 challenge. We do it for each of the Executive 9 Committee, Enterprise Committee, I think is the way 10 Fifth Third phrases it, and we then will by virtue of 11 who's a big talent on a skip level perhaps talk about 12 a next level down. 13 Like, for example, as audit chair I 14 care passionately about that who's going to succeed 15 Mark Hazel as the Controller even though he's not on 16 the Enterprise Committee to the CFO and how we think 17 about financial controls as one example. 18 Q By way of clarification the email 19 does rep -- reckon -- Excuse me -- identify 20 Bob Shaffer -- 21 A Okay. 22 Q Is that who would have been the -- 23 A Correct. Thank you. That's 24 correct. 25 Q -- head of Human Resources at that</p>	Page 57	<p>1 FIFTHTHIRD-MCHUGH-001154; is that right? 2 A Correct. 3 Q And similar to what we reviewed for 4 2018 that would have been a communication plan 5 reviewed and approved out by the Human Capital/ 6 Compensation Committee; is that correct? 7 A Correct, for submission and review 8 with the full board. 9 Q Okay. And that's what's taking 10 place here in December, 2019, is the review and 11 submission by the whole board; is that correct? 12 A Correct. 13 Q Okay. If I could refer you to 14 FIFTHTHIRD-MCHUGH-001143. 15 A I am there. 16 Q And that is titled "Emergency CEO 17 Succession Plan"; is that correct? 18 A Correct. 19 Q And that Emergency CEO Succession 20 Plan runs through FIFTHTHIRD-MCHUGH-001150; is that 21 right? 22 A That is correct. 23 Q And this is the Emergency CEO 24 Succession Plan that would have been reviewed and 25 approved out and recommended by the Human Capital/</p>

<p>Page 60</p> <p>1 Compensation Committee; is that correct?</p> <p>2 A It was reviewed and approved for</p> <p>3 submission for the full board to review.</p> <p>4 Q Okay. And that review and</p> <p>5 submission was by the Human Capital/Compensation</p> <p>6 Committee; is that correct?</p> <p>7 A Correct.</p> <p>8 Q Okay. And I think you -- you</p> <p>9 indicated before you were part of the Human Capital/</p> <p>10 Compensation Committee that would have reviewed and</p> <p>11 approved of this Emergency CEO Succession Plan; is</p> <p>12 that right?</p> <p>13 A That's correct.</p> <p>14 Q Okay. Referring to</p> <p>15 FIFTHTHIRD-MCHUGH-001148 --</p> <p>16 A I am there.</p> <p>17 Q -- in the category of</p> <p>18 Potential Management Candidates it refers to</p> <p>19 Tayfun Tuzun and Phil McHugh; is that correct?</p> <p>20 A Correct.</p> <p>21 Q Okay. Had you determined that</p> <p>22 Phil McHugh would have been the appropriate emergency</p> <p>23 CEO successor?</p> <p>24 A No. I observed it from my personal</p> <p>25 view and was comforted to see the CFO was also listed</p>	<p>Page 62</p> <p>1 think in an emergency if you can't get ahold of board</p> <p>2 members a Finance Committee would meet with all of the</p> <p>3 chairs of all the committees to start the process to</p> <p>4 say, "Dust this off, pull it out," and say, "Who did</p> <p>5 management propose," and then, "What -- What do we</p> <p>6 think?" It would not necessarily automatically be</p> <p>7 assumed that the names on this page -- And it's why</p> <p>8 quite frankly I have been on boards where they won't</p> <p>9 be even put this as a document so they don't mislead</p> <p>10 another person in the organization to think they're</p> <p>11 potentially CEO successor. They call it a white</p> <p>12 envelope that only the chair holds because they don't</p> <p>13 want to create that distraction with certain leaders</p> <p>14 in the organization because I believe we're sitting</p> <p>15 here because someone thought his name was on the page</p> <p>16 and he should be the CEO and that's not the process.</p> <p>17 The CEO successor is the board's</p> <p>18 responsibility and only the board, and even though</p> <p>19 Greg Carmichael was the Chairman the Chairman is one</p> <p>20 voice out of what, we have 15 people, so today</p> <p>21 Tim Spence is one voice and he only has one voice in</p> <p>22 that vote for how we're going to think about who's CEO</p> <p>23 succession even in today's environment.</p> <p>24 Q Was this Emergency CEO Succession</p> <p>25 Plan approved by the board?</p>
<p>Page 61</p> <p>1 because that's how I would have been looking at it for</p> <p>2 an emergency successor.</p> <p>3 Q Did you oppose Phil McHugh as an</p> <p>4 emergency CEO successor?</p> <p>5 A No, because I respect the views of</p> <p>6 my peers and if someone who's more operationally</p> <p>7 focused because my filter is audit chair and thinking</p> <p>8 of external communications that I am biased towards a</p> <p>9 CFO always and an interim unless the CFO is</p> <p>10 demonstrating some sort of incapability of being an</p> <p>11 interim. I always respect the view of other board</p> <p>12 members, did not know the view of other board members,</p> <p>13 but it was understandable that an operation leader</p> <p>14 would equally be listed here.</p> <p>15 Q Why is that?</p> <p>16 A Because it's normally you're</p> <p>17 evaluating the CEO for their capabilities and of his</p> <p>18 assessing or if it's a she they're assessing their</p> <p>19 team. It's their duty and their role of what we</p> <p>20 expect from them to be coming to these meetings with</p> <p>21 proposed candidates, but ultimately it's a board</p> <p>22 responsibility.</p> <p>23 So say a Scenario 1A or 1B occurred</p> <p>24 we would meet as a board likely perhaps starting with</p> <p>25 that Finance Committee that's established which I</p>	<p>Page 63</p> <p>1 A Approved for review and to say we</p> <p>2 have a document to show good governance hygiene, that</p> <p>3 we're thoughtful about how we think about it at a</p> <p>4 point in time, but again it's in a -- when you pull</p> <p>5 the trigger for any of these scenarios it's that point</p> <p>6 in time.</p> <p>7 Think of it like a balance sheet.</p> <p>8 A balance sheet is nothing more than that day that you</p> <p>9 printed it. And so this report is nothing more than</p> <p>10 the views on that day, but the day you have to make</p> <p>11 these decisions drives what's going on in the</p> <p>12 environment.</p> <p>13 For example, look what happened</p> <p>14 last year with March -- March -- They call it</p> <p>15 March Madness in the banking sector. If we were an</p> <p>16 SVB that was -- what happened with SVB you would be</p> <p>17 pulling out to say -- If you have your regulator</p> <p>18 saying, "Your CEO is not operating effectively," you</p> <p>19 would have to say, "What's going on in the current</p> <p>20 environment and who would you pick then as that</p> <p>21 potential successor as you're driving an interim," so</p> <p>22 it's truly a point in time and this is just your</p> <p>23 governing document to show you have got good</p> <p>24 governance hygiene.</p> <p>25 Q Who would have indicated that they</p>

<p>Page 64</p> <p>1 felt Phil McHugh was appropriate to be an emergency 2 CEO successor? 3 A I -- 4 MR. CIOFFI: Objection to the form 5 of the question -- 6 A I do not -- 7 MR. CIOFFI: -- assumes facts not 8 in evidence if -- that someone did say that 9 he was a potential emergency successor. 10 BY MR. SABA: 11 Q Are you aware of any board members 12 who testified that Phil McHugh was an appropriate 13 emergency CEO successor? 14 A I am not aware of anyone who's 15 testified to that. 16 Q Did you voice an opinion that 17 Phil McHugh is not an -- an appropriate emergency CEO 18 successor? 19 A No, because I took comfort to see 20 Tayfun's name there and I said, "If the day ever came 21 I'll be quite vocal about who should be the 22 successor," based off of the needs at that moment. 23 Q And could those needs have 24 demonstrated that Phil McHugh should be the emergency 25 CEO successor? </p>	<p>Page 66</p> <p>1 require that specific individuals be identified with 2 respect -- with respect to emergency succession? 3 A I am not understanding your 4 question. 5 Q Do you have any understanding 6 whether or not the requirements for an Emergency CEO 7 Succession Plan require that a specific individual or 8 individuals be identified for that Succession Plan? 9 A No. 10 Q You don't know one way or another? 11 A I -- I don't believe there's any 12 framework for an emergency CEO succession that would 13 indicate that a particular role has to be in that as 14 one of the individuals or roles that are required to 15 be there. It's based off of evaluating off of what 16 the board views at the moment of where that need is 17 who's in the best capabilities to serve in that role. 18 Q Who prepared the Emergency CEO 19 Succession Plan that we see identified 20 FIFTHTHIRD-MCHUE-001143 through FIFTHTHIRD-MCHUGH- 21 001150? 22 A Management. 23 Q Who from management specifically? 24 A I would guess it would be 25 Bob Shaffer with his team primarily with oversight </p>
<p>Page 65</p> <p>1 A I doubt it because communication 2 skills were critical and you have to be able to do 3 more than read your slides, and by virtue of those 4 type of scenarios it's even more critical to have 5 strong communication skills. 6 Q Did any board member indicate to 7 you that Phil McHugh should not be an emergency CEO 8 successor? 9 A Rephrase that question, please. 10 Q Did any board members indicate to 11 you that Phil McHugh should not be listed as an 12 emergency CEO successor? 13 A In executive session all I heard 14 was where folks felt strongly that the CFO is the 15 right choice for a potential successor. There 16 wasn't -- I did not -- I do not recall hearing anyone 17 voice pro or negative on Phil. 18 Q Do you recall any discussion 19 regarding Phil McHugh as emergency CEO successor? 20 A No. 21 Q Are you aware if the bank is 22 required to have an Emergency CEO Succession Plan? 23 A Every company is required to have 24 an Emergency Succession Plan. 25 Q Do you know if those requirements </p>	<p>Page 67</p> <p>1 from Greg Carmichael. 2 Q Are there any minutes from the 3 executive session where the Emergency CEO Succession 4 Plan was discussed? 5 A I'm sure there are, but I don't 6 have them nor recollect them. 7 Q You're sure there are minutes from 8 that meeting? 9 A Well, there would be minutes that 10 would at a minimum say, "The board reviewed CEO 11 succession, emergency succession." I'm not -- at all 12 have a recollection of what sort of depth would be in 13 those minutes because being in executive session it is 14 not unusual just to make reference that the board 15 exercised its duty performing that review. 16 Q Can you identify FIFTHTHIRD-MCHUGH- 17 001141 through 1142 for me, please? 18 A That is CEO Succession Plan. 19 Q Do you know who prepared 20 FIFTHTHIRD-MCHUGH-001141 through 001142? 21 A Again I would say management, 22 Bob Shaffer, and after review of by Greg Carmichael 23 would have been provided as a draft to the board. 24 Q Did the board approve of the 25 CEO Succession Plan that's identified </p>

<p>Page 68</p> <p>1 FIFTHTHIRD-MCHUGH-00141 through 00142?</p> <p>2 MR. CIOFFI: Objection to the form</p> <p>3 of the question.</p> <p>4 A The board reviewed it and discussed</p> <p>5 it in executive session.</p> <p>6 Q And what were those discussions?</p> <p>7 A We supported Tim Spence as</p> <p>8 performing extremely well and that he was likely going</p> <p>9 to be CEO successor and again not much on emergency</p> <p>10 successor because the majority of the board that were</p> <p>11 vocal on the discussion were happy to see the CFO was</p> <p>12 reflected for purposes of external communications</p> <p>13 because Tayfun was a fabulous communicator.</p> <p>14 Q What was the discussion regarding</p> <p>15 Brian Lamb?</p> <p>16 A Brian Lamb is an individual who --</p> <p>17 an amazing communicator so much so the joke was that</p> <p>18 even Greg didn't want to follow him in a presentation,</p> <p>19 and he just had an amazing runway that he was viewed</p> <p>20 as long-term potential as a potential successor to the</p> <p>21 CEO by virtue of his amazing strategic and</p> <p>22 communication skills but needed more -- more deeper</p> <p>23 operational experience within the bank.</p> <p>24 Q You referred to he had an amazing</p> <p>25 runway. What do you mean an amazing runway?</p>	<p>Page 70</p> <p>1 painted a picture for the board beyond what you were</p> <p>2 reading on the page.</p> <p>3 Q Other than presentations Brian Lamb</p> <p>4 may have made at board meetings what other evidence</p> <p>5 did you have of his inspired leadership?</p> <p>6 A His associates. It was one where</p> <p>7 folks would come up to me who when you're in a</p> <p>8 cocktail hour and just say what a pleasure it was to</p> <p>9 work with Brian and how Brian inspired them. It was</p> <p>10 highly unusual to have that.</p> <p>11 Q Who specifically indicated that?</p> <p>12 A I don't know. They were skip-level</p> <p>13 folks that you have at cocktail hours when Greg would</p> <p>14 expand a board dinner that would include beyond the</p> <p>15 Enterprise Committee.</p> <p>16 Q How often did that occur?</p> <p>17 A Oh, once a year I think we had</p> <p>18 those larger board dinners where there were folks</p> <p>19 beyond the Enterprise Committee, so it wasn't</p> <p>20 frequently, but when you're a board member you</p> <p>21 remember because of the fact that it's unusual to have</p> <p>22 those type of interactions.</p> <p>23 Q How many interactions did you have</p> <p>24 regarding Brian Lamb?</p> <p>25 A Oh, several. Brian Lamb was one</p>
<p>Page 69</p> <p>1 A Leadership is always -- I mean he</p> <p>2 -- he effectively had a charisma. There was a</p> <p>3 charisma about Brian Lamb that created followship. He</p> <p>4 in -- He had an inspired leadership in how his</p> <p>5 operating style was, and that's a big part of what any</p> <p>6 leader of a company has to do. They have to be an</p> <p>7 aspiring leader, especially in the challenges the</p> <p>8 banking sector faces. He -- He was nothing short of</p> <p>9 impressive.</p> <p>10 Q What -- What did you base that</p> <p>11 determination on that he inspired leadership?</p> <p>12 A Again I am sure you have your</p> <p>13 personal views of somebody that's inspired you just by</p> <p>14 listening to them and that's how Brian Lamb was and to</p> <p>15 the point that your CEO didn't even want to follow him</p> <p>16 in a presentation.</p> <p>17 Q So again that determination that --</p> <p>18 that Brian Lamb had inspired leadership, that was just</p> <p>19 limited to whatever presentations he may have made</p> <p>20 during board meetings?</p> <p>21 A When he -- he -- Equally when he --</p> <p>22 So that's a great question because when he -- I always</p> <p>23 remembered him in a board meeting because he didn't</p> <p>24 speak to his slides. He came in and was passionate</p> <p>25 about what he had done and what he wanted to do. He</p>	<p>Page 71</p> <p>1 who equally sought out the directors and made it --</p> <p>2 He -- He just understood what it meant to be a leader.</p> <p>3 It was building relationships and he would go out of</p> <p>4 his way to ensure at a cocktail hour he was meeting</p> <p>5 with different people on -- on the board, and he</p> <p>6 would recall -- This is other was inspiring -- he</p> <p>7 would just recall your prior conversation and ask</p> <p>8 about details in your life. That's -- That's really</p> <p>9 impressive with how many people he was interacting</p> <p>10 with.</p> <p>11 Q Other than those cocktail party</p> <p>12 interactions and the presentations made by Brian Lamb</p> <p>13 anything else that -- any other evidence you had that</p> <p>14 he was an inspired leader?</p> <p>15 A No. It was communication again</p> <p>16 which is a critical aspect of being a CEO.</p> <p>17 Q Other than Exhibit 4 what other</p> <p>18 documentation would the board have at the December</p> <p>19 board meeting?</p> <p>20 A For evaluating?</p> <p>21 MR. CIOFFI: Objection to the form</p> <p>22 of the question.</p> <p>23 THE WITNESS: Yeah.</p> <p>24 MR. CIOFFI: About what?</p> <p>25 THE WITNESS: Thank you.</p>

<p>1 BY MR. SABA:</p> <p>2 Q Referring specifically to December,</p> <p>3 2019, other than the talent deck that we have marked</p> <p>4 as Exhibit No. 4 what other documentation would you</p> <p>5 receive for that meeting?</p> <p>6 MR. CIOFFI: Same objection. You</p> <p>7 can answer.</p> <p>8 A I'm pausing because the only other</p> <p>9 documents I would look at as by being audit chair and</p> <p>10 serving on Risk Committees we would look at the</p> <p>11 performance documents of the risk leader, the</p> <p>12 internal audit leader, and the credit leader because</p> <p>13 that's a governance requirement within the banking</p> <p>14 sector, so to make sure I'm complete in my answer this</p> <p>15 was the only document for the individuals we're</p> <p>16 talking about is Phil, Brian Lamb, Tim Spence, that I</p> <p>17 would have looked at on their performance.</p> <p>18 Q Nothing else?</p> <p>19 A Nothing else.</p> <p>20 Q Okay. And to describe my question</p> <p>21 nothing other than Exhibit 4 with respect to the</p> <p>22 performance of Phil McHugh, Tim Spence, and Brian</p> <p>23 Lamb; correct?</p> <p>24 A Correct.</p> <p>25 Q Do you recall how frequently Brian</p>	<p>Page 72</p> <p>1 two-thirds down the page it begins, "Thereafter,</p> <p>2 Mr. Carmichael and Mr. Shaffer initiated a review of</p> <p>3 potential succession timelines and candidates for the</p> <p>4 Chief Executive Officer ("CEO") position. They</p> <p>5 reviewed top succession candidates, including</p> <p>6 Mr. Spence, and discussed the potential timelines for</p> <p>7 their readiness and key development priorities for</p> <p>8 each such candidates" -- Do you see that there?</p> <p>9 A I do.</p> <p>10 Q Who were the candidates that they</p> <p>11 discussed other than Mr. Spence?</p> <p>12 A I don't recall because the board</p> <p>13 was already in their mind, myself included, that</p> <p>14 the -- the talent of Mr. Spence was such that the</p> <p>15 focus of the discussion was always about how are we</p> <p>16 developing him.</p> <p>17 Q Do you know why it refers to plural</p> <p>18 candidates that were discussed by Mr. Carmichael and</p> <p>19 Mr. Shaffer?</p> <p>20 A I do and I'm chuckling because of</p> <p>21 my vast public company experience. Every CEO likes to</p> <p>22 think they have multiple candidates by virtue of how</p> <p>23 they're being assessed in developing talent and</p> <p>24 leadership, so I have yet to see a CEO ever propose</p> <p>25 only one candidate and not any others, so it's more of</p>
<p>1 Lamb would attend board meetings?</p> <p>2 A No. I would do the same math as</p> <p>3 how I described Phil.</p> <p>4 (Deposition Exhibit 5 was marked</p> <p>5 for identification.)</p> <p>6 BY MR. SABA:</p> <p>7 Q You would defer, though, to the</p> <p>8 board minutes for an indication of who was actually</p> <p>9 present at a particular board meeting; is that right?</p> <p>10 A Correct.</p> <p>11 Q Ms. Mallesch, I have handed you</p> <p>12 what's been marked as Exhibit No. 5 which is</p> <p>13 Bates stamped FIFTHTHIRD-MCHUGH-000253 through</p> <p>14 FIFTHTHIRD-MCHUGH-000265. Can you identify that</p> <p>15 document for me, please?</p> <p>16 A Yes. It's the minutes of the board</p> <p>17 meeting of December 17th, 2019.</p> <p>18 Q And with respect to that board</p> <p>19 meeting Mr. Spence was present, but Mr. Lamb and</p> <p>20 Mr. McHugh were not present; is that correct?</p> <p>21 A Correct.</p> <p>22 Q If you could turn to the second</p> <p>23 page of Exhibit No. 5, FIFTHTHIRD-MCHUE-000254.</p> <p>24 A I am there.</p> <p>25 Q Referring to the paragraph roughly</p>	<p>Page 73</p> <p>1 where they're trying to demonstrate their capabilities</p> <p>2 which is always evaluated by a board over the depth of</p> <p>3 talent that a CEO can present as potential successors</p> <p>4 because it's a great luxury. I have only had it</p> <p>5 happen once on one of my public company boards where</p> <p>6 we had three potential candidates and that is a luxury</p> <p>7 most companies don't have, so that's more management</p> <p>8 and because management crafts the minutes nobody</p> <p>9 edited it beyond to say what was going on because I</p> <p>10 can see the executive session below. We talk in</p> <p>11 executive session and the focus was on Tim's</p> <p>12 development.</p> <p>13 Q You said you have yet to see a CEO</p> <p>14 present only one candidate?</p> <p>15 A Correct.</p> <p>16 Q So who were the other candidates</p> <p>17 that Mr. Carmichael would have presented?</p> <p>18 A It's what you referenced in your</p> <p>19 succession -- whatever one of your exhibits the</p> <p>20 succession shared where you were asking me about whose</p> <p>21 names are there presented is Tayfun and Phil is how</p> <p>22 Greg Carmichael would present potential other</p> <p>23 candidates.</p> <p>24 Q Here's --</p> <p>25 A Go ahead.</p>
<p>Page 74</p>	<p>Page 75</p>

<p>1 Q No. I'm just trying to understand 2 what you just said. So you're saying Greg Carmichael 3 would have presented Tayfun and Phil -- 4 A Yes. 5 Q -- as well as Tim Spence; correct? 6 A Correct, but again by virtue of 7 being able to have plural in that minutes. 8 Q And with respect to Tayfun and Phil 9 what were Mr. Carmichael's comments regarding their 10 potential timelines and their -- and their readiness 11 and key development priorities -- priorities? 12 A He always would call them just 13 potential. They were never ever emphasized by him 14 either. His energy would be more in developing Tim 15 too. 16 Q I'm just referring to the minutes 17 where it says, "They reviewed top succession 18 candidates," which you indicated were -- would have 19 been Phil and Tayfun in addition to Tim Spence, "and 20 discussed the potential timelines for their readiness 21 and key development priorities for each such 22 candidate." 23 A Yeah, it's a management -- that's a 24 management written document that we did not challenge 25 in approving these minutes because management, in</p>	Page 76	<p>1 their readiness? 2 MR. CIOFFI: Same objection. You 3 may answer if you can. 4 A Again my focus was on Tim to ensure 5 he was developing Tim. Whatever they said I don't 6 recall. 7 Q Had you decided in your mind at 8 that time that Tim Spence would be the next President 9 and CEO of Fifth Third Bank? 10 A I decided at that time that the 11 person who was on the trajectory to ultimately be CEO 12 because the President role that you're referencing was 13 another interim step. It wasn't CEO at that point in 14 time. He was given another expanded role. So it was 15 not -- It was I was just viewing that, yeah, this is 16 the talent. If we're going to say there's an internal 17 talent to develop rather than going externally 18 Tim Spence was that talent. 19 Q And you had already made that 20 decision as of December, 2019; is that correct? 21 A I made the decision as one director 22 that where I felt the development should -- efforts 23 should be placed is with Tim Spence. 24 Q Did Greg Carmichael ever 25 communicate to you that as of August of 2019 he had</p>
<p>1 fact, did do that. Again the responsibility is the 2 board. There's nothing management can do to change 3 that otherwise, so that's just their performing the 4 work we asked to provide potential candidates and 5 develop timelines. 6 Q And my specific question is 7 recognizing you said management did do that, they 8 developed potential timelines and the readiness and 9 key development priorities, what specifically were 10 those with respect to Tayfun and Phil McHugh? 11 A We would have to -- 12 MR. CIOFFI: Objection to the form 13 of the question as to whether you're talking 14 about CEO, a permanent position, or going 15 back to 1142 and emergency successor. 16 MR. SABA: Just an objection for 17 the record, Michael. You don't need to make 18 it a speaking objection. 19 BY MR. SABA: 20 Q Going back again to the management 21 doing what they were supposed to do with respect to 22 developing potential timelines and with respect to the 23 readiness and key development priorities what did 24 Mr. Carmichael present with respect to Mr. Tuzun and 25 Mr. McHugh regarding their potential timelines and</p>	Page 77	<p>1 some personal issues and may have to step down earlier 2 than his desires or the board's desires would have 3 been? 4 A He made reference in executive 5 session to the full board that he was looking to 6 develop his successor sooner. Now, Marsha or -- who 7 was the lead independent director or other directors 8 may have had conversations with. I do not know. I 9 just know that Greg was feeling we should be really 10 developing his successor. 11 Q When was the executive session 12 wherein Greg Carmichael indicated that he wanted to 13 develop his successor sooner? 14 A He was always a very unique CEO 15 from my experience. Most CEOs never want to let go of 16 their power. He was one that even when we were 17 looking at M&A transactions if it was for the good of 18 the company he said, "I will step down as the CEO. I 19 would step down or just be -- serve on the board for 20 an interim transition period," quite unique. It was 21 refreshing quite frankly. So it wasn't surprising to 22 me that if there was someone who felt that way that he 23 was always just looking at any alternative and if he 24 felt Tim was going to be ready sooner he didn't want 25 to hold back Tim nor risk losing Tim because at the</p>

<p>Page 80</p> <p>1 end of the day the financial services overall, banking</p> <p>2 in particular, there's been a structural shift that's</p> <p>3 being disrupted by Fintech, digital, shadow banks,</p> <p>4 that you -- A strategic leader was going to be the</p> <p>5 reason Fifth Third could be successful and it's</p> <p>6 demonstrated. Just look what's going on.</p> <p>7 Tim is getting accolades. We chose</p> <p>8 the right leader by how the market is performing</p> <p>9 against what Tim Spence has been executing against and</p> <p>10 we're making differences that Fifth Third is getting</p> <p>11 noticed every day, so it's proof that we chose the</p> <p>12 right person, and for Greg to be willing to want to</p> <p>13 step down said a lot about he was thinking about the</p> <p>14 bank first and the success of the bank. So I was very</p> <p>15 proud to serve on a board with a CEO with that</p> <p>16 perspective.</p> <p>17 Q You indicated there was an</p> <p>18 executive session wherein Greg Carmichael specifically</p> <p>19 indicated he wanted to develop a successor sooner.</p> <p>20 When did that executive succession occur?</p> <p>21 A When I reference --</p> <p>22 MR. CIOFFI: Objection to the form</p> <p>23 of the question, When did that executive --</p> <p>24 MR. SABA: -- succession occur?</p> <p>25 MR. CIOFFI: -- succession occur?</p>	<p>Page 82</p> <p>1 We're all thinking Tim's going to be the successor.</p> <p>2 He's moving at a rate faster and he's noticed in the</p> <p>3 street. He was being written up in -- I think it was</p> <p>4 American Banker as digital -- for his digital</p> <p>5 capabilities back in 2018, so he was already being</p> <p>6 recognized in the community.</p> <p>7 We lost Brian Lamb. You saw what</p> <p>8 happened when Brian Lamb went to JPMorgan Chase,</p> <p>9 another great talent. This is an industry where that</p> <p>10 occurs often and we had a unicorn in Tim Spence. He's</p> <p>11 like a whiz kid because I am always in awe of his</p> <p>12 capabilities.</p> <p>13 Q Going -- Going back to the unicorn</p> <p>14 for a second in terms of him being digital banker of</p> <p>15 the year --</p> <p>16 A Uh-huh.</p> <p>17 Q -- American Banker, is that one of</p> <p>18 the reasons that you selected him as --</p> <p>19 A No.</p> <p>20 Q -- as far as CEO?</p> <p>21 A No. That just validated why I</p> <p>22 felt -- It's always great when you read something that</p> <p>23 validates what you're observing.</p> <p>24 Q Why did that validate what you were</p> <p>25 thinking?</p>
<p>Page 81</p> <p>1 BY MR. SABA:</p> <p>2 Q When did that executive --</p> <p>3 MR. CIOFFI: Discussion?</p> <p>4 Q -- session --</p> <p>5 MR. CIOFFI: Discussion about it?</p> <p>6 MR. SABA: Yeah. He said he had --</p> <p>7 that it was during --</p> <p>8 BY MR. SABA:</p> <p>9 Q Do you understand the question?</p> <p>10 MR. CIOFFI: I don't understand the</p> <p>11 question.</p> <p>12 A Rephrase your question.</p> <p>13 Q You indicated earlier that there</p> <p>14 was an executive session of the board during which</p> <p>15 Greg Carmichael indicated he wanted to develop his</p> <p>16 successor sooner?</p> <p>17 A Because Tim was showing and</p> <p>18 exhibiting a level of capability that he didn't want</p> <p>19 to hold him back. I gave an M&A example that he was</p> <p>20 willing to step down and say -- Most folks only want</p> <p>21 to do an M&A if they're going to be the overall CEO.</p> <p>22 I'm trying to give you color about Greg, that Greg was</p> <p>23 always about the success of the bank first, and by</p> <p>24 virtue of having that style about him it wasn't</p> <p>25 surprising to me that he wanted to let the board know.</p>	<p>Page 83</p> <p>1 A American Banker is a -- is a</p> <p>2 respected periodical in the banking sector.</p> <p>3 Q Do you have any understanding of</p> <p>4 what the process was for him to be selected as digital</p> <p>5 banker of the year?</p> <p>6 A I have no idea what the process is,</p> <p>7 but when you're put on a -- any of the periodicals --</p> <p>8 He's -- He's written up in the Wall Street Journal.</p> <p>9 He's continually written up to -- now in his current</p> <p>10 role. You just have to go do your research on that</p> <p>11 too. He -- He is -- Quite frankly let's just put it</p> <p>12 out there. I see him as what Jamie Dimon was like</p> <p>13 when Jamie Dimon was that age quite frankly. He's</p> <p>14 amazing. Jamie Dimon was doing the things that</p> <p>15 Tim Spence is doing except Jamie Dimon wasn't digital</p> <p>16 so why Tim is a unicorn in my view is he brings the</p> <p>17 depth and breadth of understanding the competitive</p> <p>18 landscape of what's going on with the disruption by</p> <p>19 virtue of Fintech and shadow banks. All due respect</p> <p>20 to Phil, solid traditional banker, but never heard any</p> <p>21 of those conversations from Phil of how we stay</p> <p>22 competitive.</p> <p>23 Q So to be fair you did not view Phil</p> <p>24 as a young Jamie Dimon; correct?</p> <p>25 A Quite frankly --</p>

<p>1 MR. CIOFFI: Objection to the form 2 of the question. 3 A Quite frankly I don't -- I don't 4 look at anything on age because I would bring in 5 Jamie Dimon if he wanted to work at Fifth Third and 6 Jamie Dimon is my age, 68, so there you go. 7 Q But you view Tim Spence as a young 8 Jamie Dimon; isn't that right? 9 MR. CIOFFI: Objection to the form 10 of the question, asked and answered, but -- 11 BY MR. SABA: 12 Q Go ahead. 13 MR. CIOFFI: -- you can answer it 14 again if you want. 15 BY MR. SABA: 16 Q That was your comparison? 17 A I'm using that more to say, "Did 18 you think Jamie Dimon was a talent when he was that 19 age too?" I mean Jamie Dimon is a unique talent. 20 Q All right. Tim Spence was a young 21 Jamie Dimon. Phil McHugh was not a young Jamie Dimon; 22 is that right? 23 MR. CIOFFI: Objection to the form 24 of the question -- 25 A I disagree.</p>	Page 84	<p>1 Q Are you aware of any conversation 2 wherein Greg Carmichael indicated to Phil McHugh that 3 Tim Spence was not ready and that Greg Carmichael 4 needed to step down earlier than anticipated and he 5 wanted Phil McHugh to step in as an interim President 6 and CEO? 7 A No. 8 Q Do you know who RHR is? 9 A Yes. 10 Q Who is RHR? 11 A They were the external consultant 12 to provide an external view of what was the candidate 13 slate as well as to assess Tim Spence for readiness as 14 a CEO. 15 Q Why did Fifth Third retain RHR? 16 A I would not have been the one who 17 would have decided RHR. That would have been most 18 likely the lead independent director in coordination 19 with the CEO and the chair of Human Capital & 20 Compensation, Mike McCallister. That is the role of 21 those folks to do that when you're getting -- just 22 inform the board of who they chose. 23 Q Were you aware that RHR was first 24 retained to assess Tim Spence, Phil McHugh, and Tayfun 25 Tuzun?</p>
<p>1 MR. CIOFFI: -- argumentative. 2 A I disagree. I -- That is not -- 3 Q Are you saying Phil McHugh was a 4 young Jamie Dimon? 5 A That's not even relevant. Help me 6 understand how that's relevant. 7 Q You specifically identified 8 Tim Spence as a -- You said, "Let's say it. Let's 9 call it out. Tim Spence is a Jamie Dimon at his -- at 10 his age. He's a young Jamie Dimon." 11 A Okay. So, yes. 12 Q And Phil McHugh is not a young 13 Jamie Dimon; is he? 14 A He's a solid traditional banker 15 just like I'm a solid traditional CFO. I'm no 16 Jamie Dimon or a young Jamie Dimon either. 17 Q My earlier question was whether or 18 not you were aware in August of 2019 that Greg 19 Carmichael indicated that he had some personal issues 20 which might cause him to step down earlier than 21 anticipated? 22 A I am not aware of that. 23 Q Okay. Are you aware of any time 24 that he indicated anything like that? 25 A No.</p>	Page 85	<p>1 MR. CIOFFI: Objection to the form 2 of the question, assumes facts not in 3 evidence. If you -- If you know you can 4 answer. 5 A My recollection is that it was only 6 Tim Spence because even the board -- That's where I 7 referenced earlier some boards like to have multiple 8 candidates even though if a second and third potential 9 candidate that management offers up is a big distance 10 and gap to what the first potential candidate 11 exhibits -- This board for the reasons I indicated 12 earlier unanimously said off of being informed that 13 there was a decision made, I think, again by Mike 14 McCallister, Marsha, and Greg that just keep it to who 15 they really believe was the CEO successor, and so 16 Tayfun and Phil came off. There was like early, early 17 indicators that they may -- might have been part of 18 the process. 19 Q When did that communication occur? 20 A I don't recall. 21 Q Was there ever a point in time 22 where you considered Phil McHugh to be a viable 23 candidate for President and CEO of Fifth Third Bank? 24 A As I said earlier, no. 25 Q Did you ever communicate to</p>

<p>Page 88</p> <p>1 Phil McHugh that he was not a viable candidate for 2 President and CEO of Fifth Third Bank?</p> <p>3 A No, and that would not have been my 4 role.</p> <p>5 Q Did anybody ever communicate to 6 Phil McHugh that he was not a viable candidate for 7 President and/or CEO of Fifth Third Bank?</p> <p>8 MR. CIOFFI: Objection to the form 9 of the question, lack of foundation. If -- 10 If -- If you know of anybody ever said that 11 to --</p> <p>12 A No.</p> <p>13 MR. CIOFFI: -- Phil you can answer 14 the question.</p> <p>15 A I do not know.</p> <p>16 Q You were in attendance at the 17 September, 2020, board meeting; is that correct?</p> <p>18 A I believe I was. There was one 19 meeting I missed post surgery so I am not sure if that 20 might have been it. It was a September meeting. You 21 would have to check the minutes to see if I was there.</p> <p>22 Q You missed a meeting on June 19th, 23 2017. Is that the meeting you're referring to?</p> <p>24 A No, I didn't miss a June meeting. 25 It would have been a September. It was during a</p>	<p>Page 90</p> <p>1 MR. SABA: We can go off the 2 record.</p> <p>3 THE VIDEOGRAPHER: We are off the 4 record 12:06. 5 (Deposition stood in recess at 6 12:06 p.m.) 7 (Deposition reconvened at 8 12:24 p.m.)</p> <p>9 THE VIDEOGRAPHER: We are back on 10 the record. This is Media 3 of today's 11 deposition. The time is 12:24.</p> <p>12 BY MR. SABA:</p> <p>13 Q Ms. Mallesch, were you aware that 14 Fifth Third filed a counterclaim against Phil McHugh 15 for filing his age discrimination claim?</p> <p>16 A I'm aware by what I do for having 17 to review all claims to the organization as audit 18 chair, yes.</p> <p>19 Q And are you aware that it's 20 unlawful to retaliate against somebody for making a 21 claim of discrimination?</p> <p>22 MR. CIOFFI: Objection to the form 23 of the question. That's not what the 24 counterclaim does. It assumes facts not in 25 evidence. It assumes a legal -- incorrect</p>
<p>Page 89</p> <p>1 strategy session I was post surgery. I was in the 2 first day but came back too soon so I had to leave.</p> <p>3 Q Were you present for part of the 4 meeting?</p> <p>5 A I was present the first day of the 6 meeting, but the strategy section was the second day. 7 Executive session I would have missed on any follow-up 8 on CEO succession.</p> <p>9 Q Do you recall if that was in 2019 10 or 2020?</p> <p>11 A Well, it wasn't '19. I was 12 definitely there in '19. It was either '20 or '21 and 13 I am just failing to remember what September it was 14 that I missed.</p> <p>15 Q Do you recall a meeting in 16 September of 2020 during which Greg Carmichael 17 indicated that Phil McHugh may be at risk of leave 18 with -- of leaving with Tim Spence's promotion to 19 President?</p> <p>20 A No.</p> <p>21 Q Did you ever have a conversation 22 with Greg Carmichael wherein he indicated that 23 Phil McHugh would be at risk of leaving with 24 Tim Spence's promotion to President?</p> <p>25 A No.</p>	<p>Page 91</p> <p>1 legal conclusion. But you may answer if you 2 can.</p> <p>3 A I'm not a lawyer, so you would know 4 that better than me.</p> <p>5 Q Do you have any understanding of 6 that?</p> <p>7 MR. CIOFFI: Objection. She 8 answered the question.</p> <p>9 A I stated my answer.</p> <p>10 Q Okay. I am asking for your -- to 11 the extent of your personal understanding do you have 12 any understanding of whether or not it's appropriate 13 to retaliate against an employee who brings a claim of 14 discrimination?</p> <p>15 MR. CIOFFI: Objection, same 16 objection. It's not what the counterclaim 17 does.</p> <p>18 A I know there was a claim filed. I 19 observed it. I chat with the management about it and 20 that's it.</p> <p>21 Q No. I am just asking if you have 22 an understanding of whether or not it's appropriate to 23 bring -- to retaliate against an employee who brings a 24 claim of discrimination?</p> <p>25 MR. CIOFFI: Objection, asked and</p>

<p>1 answered. She said she's not a lawyer.</p> <p>2 BY MR. SABA:</p> <p>3 Q I'm asking for your understanding.</p> <p>4 A I am standing by my prior answer.</p> <p>5 Q Your answer was you're not a</p> <p>6 lawyer. I'm asking to the extent of your knowledge do</p> <p>7 you have any understanding whether or not it's</p> <p>8 appropriate to retaliate against --</p> <p>9 A No.</p> <p>10 Q -- an employee?</p> <p>11 You don't have an understanding?</p> <p>12 A I don't have an understanding of</p> <p>13 your question.</p> <p>14 Q Okay. You don't know whether or</p> <p>15 not it's appropriate to retaliate against an employee</p> <p>16 who brings a claim of discrimination?</p> <p>17 A I have not observed any</p> <p>18 retaliation, so I stand by my answer.</p> <p>19 Q No, that's not my question. I am</p> <p>20 not asking if you have observed any retaliation. I am</p> <p>21 asking whether or not you have any understanding</p> <p>22 whether it's appropriate to retaliate against an</p> <p>23 employee who brings a claim for discrimination?</p> <p>24 MR. CIOFFI: Same objection. Now</p> <p>25 that you ask it the fourth time you're</p>	<p>Page 92</p>	<p>1 BY MR. SABA:</p> <p>2 Q What is your knowledge?</p> <p>3 MR. CIOFFI: Wait a minute. Let me</p> <p>4 pose my objection. Objection to the form of</p> <p>5 the question in that it's delivered as a</p> <p>6 hypothetical and speculation with absolutely</p> <p>7 no context.</p> <p>8 MR. SABA: It's not a hypothetical</p> <p>9 and it's not speculation.</p> <p>10 MR. CIOFFI: Sure, it is.</p> <p>11 BY MR. SABA:</p> <p>12 Q Go ahead. What is your</p> <p>13 understanding?</p> <p>14 A I stand by my prior response to you</p> <p>15 because I am not understanding how -- why this is</p> <p>16 relevant.</p> <p>17 Q I am going to ask you the question</p> <p>18 again. It's very simple --</p> <p>19 A Uh-huh.</p> <p>20 Q -- all right? You indicated before</p> <p>21 you do have an understanding whether or not it's</p> <p>22 appropriate to retaliate against an employee who</p> <p>23 brings a claim for discrimination. What is your</p> <p>24 understanding?</p> <p>25 MR. CIOFFI: Objection, same</p>	<p>Page 94</p>
<p>1 becoming argumentative.</p> <p>2 BY MR. SABA:</p> <p>3 Q Go ahead.</p> <p>4 A Repeat the question.</p> <p>5 Q Yes. I am asking whether or not</p> <p>6 you have any understanding whether or not it is</p> <p>7 appropriate to retaliate against an employee who</p> <p>8 brings a claim of discrimination?</p> <p>9 A I don't view that it was</p> <p>10 retaliation from how the form of that document was</p> <p>11 written, so you have to help me understand that.</p> <p>12 Q I am not asking about the document.</p> <p>13 I am asking about your understanding.</p> <p>14 A Oh, but you referenced the</p> <p>15 document.</p> <p>16 Q That was a prior question. My</p> <p>17 question --</p> <p>18 A Oh.</p> <p>19 Q -- generally speaking to the extent</p> <p>20 of your knowledge, your understanding, do you have any</p> <p>21 understanding whether or not it's appropriate to</p> <p>22 retaliate against an employee who brings a claim of</p> <p>23 discrimination?</p> <p>24 A I do.</p> <p>25 MR. CIOFFI: Objection to the form.</p>	<p>Page 93</p>	<p>1 objection.</p> <p>2 A Would you just phrase the question</p> <p>3 more simply? You're really making a very long-winded</p> <p>4 question. Phrase the question -- Are you asking do I</p> <p>5 think it's appropriate to retaliate against someone --</p> <p>6 Q For bringing --</p> <p>7 A -- on anything?</p> <p>8 Q For bringing a claim of</p> <p>9 discrimination.</p> <p>10 MR. CIOFFI: Objection, asked and</p> <p>11 answered --</p> <p>12 BY MR. SABA:</p> <p>13 Q That's -- That's my question.</p> <p>14 MR. CIOFFI: -- argumentative.</p> <p>15 BY MR. SABA:</p> <p>16 Q Is that appropriate?</p> <p>17 A It's not appropriate, but I haven't</p> <p>18 seen anything that should suggest that, so it's not</p> <p>19 appropriate, of course. That's of values.</p> <p>20 MR. SABA: Okay. That's all I have</p> <p>21 at this time. We'll continue in progress</p> <p>22 with respect to the other issues and include</p> <p>23 that in the questions.</p> <p>24 MR. CIOFFI: Again we'll address</p> <p>25 that at the end. As you know our position is</p>	<p>Page 95</p>

<p>1 you have no right to continue the deposition. 2 You have one chance to depose this witness 3 and that's it, but we'll take that up with 4 the Court. 5 MR. CIOFFI: Ms. Mallesch, I have a 6 few questions for you. 7 THE WITNESS: Sure. 8 EXAMINATION 9 BY MR. CIOFFI: 10 Q If you could turn to Exhibit No. 5, 11 please. 12 A I'm there. 13 Q If you turn to Page 2 and the full 14 paragraph at the beginning -- in the middle of the 15 page which says, "Thereafter, Mr. Carmichael and 16 Mr. Shaffer initiated a review" -- Do you see that? 17 A I do. 18 Q And go ahead and read those first 19 two sentences if you would, please, into the record. 20 A "Thereafter, Mr. Carmichael and 21 Mr. Shaffer initiated a review of potential succession 22 timelines and candidates for the CEO position. They 23 reviewed top succession candidates, including 24 Mr. Spence, and discussed the potential timelines for 25 their readiness and key development priorities for</p>	<p>Page 96</p>	<p>1 would you, please? 2 A I'm there. 3 Q Did the discussion as reflected in 4 the minutes, Exhibit No. 5, center around this 5 particular CEO succession chart? 6 A It did. 7 Q And as a result were the 8 discussions that potential emergency successors were 9 Tayfun Tuzun, Phil McHugh, and a board member? 10 MR. SABA: Continuing objection. 11 A Correct. 12 Q And were those the candidates 13 presented at the board meeting as potential emergency 14 successors? 15 MR. SABA: Objection. 16 A Correct. 17 Q In terms of the permanent CEO 18 succession who was presented as a candidate or 19 candidates? 20 A Tim Spence with Brian Lamb with a 21 much longer runway as suggested here of seven plus 22 years. 23 Q At any time at the board meeting 24 reflected in Exhibit No. 5 was Tayfun Tuzun, 25 Phil McHugh, or anyone else other than Tim Spence</p>	<p>Page 98</p>
<p>1 each such candidate." 2 Q Did these discussions include 3 discussions about permanent CEO succession and also 4 emergency CEO succession? 5 MR. SABA: Objection, form of the 6 question, asked and answered. Go ahead. You 7 can answer. 8 A Yes, it was both. 9 Q Who was presented as a candidate 10 for Chief Executive Officer as a permanent position, 11 as a permanent successor? 12 MR. SABA: Objection, asked and 13 answered. 14 A Tim Spence. 15 Q Were there candidates presented as 16 potential successors on an emergency or interim basis? 17 MR. SABA: Continuing objection. 18 A Yes. 19 Q And who were those candidates? 20 A As the document we reviewed earlier 21 Tayfun and Phil. 22 Q The earlier document is Exhibit 4. 23 If you look at that, please. 24 A I'm there. 25 Q And look at the Bates No. 1142;</p>	<p>Page 97</p>	<p>1 presented as a permanent CEO successor? 2 MR. SABA: Objection, asked and 3 answered. 4 A No. 5 Q I am going to ask you another 6 question. So we're finished with those exhibits. As 7 a board member when you were discussing and 8 deliberating as to who should succeed Greg Carmichael 9 as President and CEO did you ever consider age as a 10 factor, age of that potential successor as a factor in 11 your discussions and deliberations? 12 MR. SABA: Objection. 13 A Never. 14 Q What did you consider? 15 A As I talked about earlier the four 16 quadrants. I'm always evaluating every leader in how 17 they are meeting the capabilities of oversight, 18 hindsight, foresight, and insight, and Tim Spence 19 checked all the boxes, and then on top of it by virtue 20 of what we're facing strategically in an environment 21 of a huge competition from Fintech, digital, and 22 shadow banking we needed someone who really understood 23 what was the current environment and how we could 24 succeed in the current environment, so Tim Spence 25 checked all the boxes there.</p>	<p>Page 99</p>

<p>Page 100</p> <p>1 Q In your discussions and</p> <p>2 deliberations over who should succeed Greg Carmichael</p> <p>3 as President and CEO you discussed that topic with</p> <p>4 other board members; is that correct?</p> <p>5 A Correct.</p> <p>6 MR. SABA: Objection.</p> <p>7 BY MR. CIOFFI:</p> <p>8 Q In those discussions at any time</p> <p>9 did any board member suggest that age of the successor</p> <p>10 should be a factor in making the determination as to</p> <p>11 Greg Carmichael's successor?</p> <p>12 MR. SABA: Objection.</p> <p>13 A No.</p> <p>14 Q In these discussions about who</p> <p>15 should succeed Greg Carmichael -- And I want to direct</p> <p>16 you specifically to the time frame of the second half</p> <p>17 of 2019 through October of 2020 -- did you ever form</p> <p>18 an opinion as to whether Phil McHugh was qualified or</p> <p>19 not qualified to be President or CEO?</p> <p>20 A I had by the time as I indicated</p> <p>21 earlier by virtue of serving on the board since 2016</p> <p>22 by 2019 I viewed Phil as a capable traditional banker</p> <p>23 who added value at the bank. Regretfully we're</p> <p>24 sitting here because he's not self-aware to equally</p> <p>25 understand his strengths and his developments, so let</p>	<p>Page 102</p> <p>1 Q In the exercise of your business</p> <p>2 judgment as a board member was Phil McHugh qualified</p> <p>3 or not qualified to be President or CEO?</p> <p>4 A He was not qualified.</p> <p>5 Q Did you discuss that particular</p> <p>6 issue with any other board members?</p> <p>7 A No, because the board was unanimous</p> <p>8 in pursuing Tim Spence as development, so, no.</p> <p>9 Q Did any other board members in your</p> <p>10 discussions with them express a view as to whether</p> <p>11 Tim Spence was qualified -- or -- Excuse me. Strike</p> <p>12 that -- as to whether Phil McHugh was qualified or not</p> <p>13 qualified to be --</p> <p>14 A No.</p> <p>15 Q -- either President or CEO?</p> <p>16 A We --</p> <p>17 MR. SABA: Objection.</p> <p>18 A We respected him, his capabilities</p> <p>19 and knowledge, his deep internal knowledge of</p> <p>20 Fifth Third, but did not see him as anything more than</p> <p>21 a utility player within the organization.</p> <p>22 Q Was that the consensus of the board</p> <p>23 that he was not qualified to be President or CEO?</p> <p>24 MR. SABA: Objection.</p> <p>25 A That would be my understanding</p>
<p>Page 101</p> <p>1 me use an example from my own personal career.</p> <p>2 I was on one of my boards by virtue</p> <p>3 of my insurance background was asked to be considered</p> <p>4 to be the CEO by another board candidate when we were</p> <p>5 doing CEO succession. I said, "I'm honored that you</p> <p>6 think I have the capabilities, but for what we're</p> <p>7 facing," because all financial services are facing the</p> <p>8 disruption that's occurring within -- by virtue of</p> <p>9 Fintech and digital, all digital capabilities, I said,</p> <p>10 "I'm a traditional CFO that happens to know Property/</p> <p>11 Casualty Insurance. That does not make me a qualified</p> <p>12 candidate. I could do the operating levers. If we</p> <p>13 were ever in an emergency and needed someone just to</p> <p>14 keep the lights on I can do that."</p> <p>15 It's regretful that Phil did not</p> <p>16 have that same self-awareness because he was highly</p> <p>17 valued, he chose to leave, he was highly compensated</p> <p>18 which would have been reflected in the proxy statement</p> <p>19 for showing the prestigiousness of his position</p> <p>20 because I believe his ego still wanted to be the CEO,</p> <p>21 and it's really about the good for the company. You</p> <p>22 have to -- As I indicated even Greg Carmichael was</p> <p>23 willing to say, "I'll step down," because we were</p> <p>24 seeing a great talent ready -- starting to show ready</p> <p>25 now.</p>	<p>Page 103</p> <p>1 since no one else voiced strong vocal support for Phil</p> <p>2 being CEO.</p> <p>3 MR. CIOFFI: I have no further</p> <p>4 questions.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. SABA:</p> <p>7 Q Ms. Mallesch, you indicated that --</p> <p>8 you made the comment that Phil's ego wanted to be CEO;</p> <p>9 is that correct?</p> <p>10 A That's my opinion.</p> <p>11 Q Okay. And in your opinion you</p> <p>12 could understand why somebody particularly if they had</p> <p>13 worked at a bank for 30 plus years would want to be</p> <p>14 CEO of the bank; correct?</p> <p>15 A That makes no sense since the only</p> <p>16 role -- It's the board's role to choose the CEO. It's</p> <p>17 not for someone to think, I'm ready to be CEO.</p> <p>18 Q No. My --</p> <p>19 A That's not the corporate world we</p> <p>20 live in.</p> <p>21 Q No. My question was not whether or</p> <p>22 not they were ready. My question is you could</p> <p>23 understand if somebody worked for a bank for 31 years</p> <p>24 that they would have the desire to be CEO?</p> <p>25 A That sounds like a union job to me</p>

<p>1 which I participated early in my career in the medical Page 104</p> <p>2 profession and only -- the only jobs that get you</p> <p>3 anything in seniority is in a union job, not in</p> <p>4 Corporate America.</p> <p>5 Q That -- That wasn't my question.</p> <p>6 My question is whether or not you could understand why</p> <p>7 somebody's worked at a company for that long would at</p> <p>8 least have the desire to be CEO?</p> <p>9 MR. CIOFFI: Objection. She</p> <p>10 answered your question.</p> <p>11 A I disagree.</p> <p>12 MR. CIOFFI: You didn't like the</p> <p>13 answer, but --</p> <p>14 BY MR. SABA:</p> <p>15 Q You don't -- You don't understand</p> <p>16 that desire?</p> <p>17 A I -- I think you got to -- It shows</p> <p>18 lack of self-awareness quite frankly.</p> <p>19 Q And whether it shows lack of</p> <p>20 self-awareness you believe that Phil McHugh had the</p> <p>21 desire to be CEO?</p> <p>22 MR. CIOFFI: Objection, lack of</p> <p>23 foundation.</p> <p>24 A I think I answered the question.</p> <p>25 MR. CIOFFI: If you know what his</p>	<p>1 because anyone who's really aspiring to be CEO will Page 106</p> <p>2 show that they have a passion and energy around their</p> <p>3 business that's more than reading off their slides.</p> <p>4 Q Okay. That's my question. It's</p> <p>5 based on his presentation style that you interpreted</p> <p>6 that he didn't want to be CEO; is that right?</p> <p>7 MR. CIOFFI: Objection --</p> <p>8 A I'm using my --</p> <p>9 MR. CIOFFI: -- form of the</p> <p>10 question. You're misstating her testimony.</p> <p>11 Her answer stands. If you -- If you have a</p> <p>12 further answer you can give it.</p> <p>13 BY MR. SABA:</p> <p>14 Q No. I'm trying to understand your</p> <p>15 testimony. You said it was not speaking to you at</p> <p>16 cocktail parties and his presentation style would be</p> <p>17 the two things that would indicate to you that he did</p> <p>18 not want to be CEO; is that correct?</p> <p>19 MR. CIOFFI: Objection. She never</p> <p>20 used the word "style". She talked about</p> <p>21 substance of the presentation. You're</p> <p>22 mischaracterizing it and it's argumentative.</p> <p>23 MR. SABA: Well, I think that's --</p> <p>24 that's your addition to testimony.</p> <p>25</p>
<p>1 desires are you -- you can answer. Page 105</p> <p>2 A I answered the question.</p> <p>3 Q No, you didn't.</p> <p>4 MR. CIOFFI: Objection. Wait.</p> <p>5 It's argumentative. She answered the</p> <p>6 question. Ask another question if you want.</p> <p>7 MR. SABA: Sure.</p> <p>8 BY MR. SABA:</p> <p>9 Q With respect to Phil McHugh based</p> <p>10 on your evaluation of his ego did you have an</p> <p>11 understanding that he wanted to be the CEO of</p> <p>12 Fifth Third Bank?</p> <p>13 A No, I didn't actually because if he</p> <p>14 did he might have pursued chatting with me during</p> <p>15 cocktail hours or presented in a way that showed that</p> <p>16 he was strategic and able to articulate and paint a</p> <p>17 picture of his business beyond reading off his slides.</p> <p>18 Actually it showed somebody that wasn't aspirational</p> <p>19 to a CEO which is why I'm very shocked we're all</p> <p>20 sitting here today because I never thought he was</p> <p>21 aspiring to be CEO.</p> <p>22 Q And that's based just on the</p> <p>23 presentations you saw at the board and not speaking to</p> <p>24 you at cocktail parties; is that right?</p> <p>25 A It's based off of how he presented</p>	<p>1 BY MR. SABA: Page 107</p> <p>2 Q But go ahead. I'm asking --</p> <p>3 Clarify your answer,</p> <p>4 A Again I think you're putting</p> <p>5 subjection into what I just said. I'm using as</p> <p>6 examples of someone showing they're aspiring to be CEO</p> <p>7 that you're asking me about that it sounds to me you</p> <p>8 view just years of working in a company means you want</p> <p>9 to be CEO. That's how I heard your question.</p> <p>10 Q No. I am asking you the question.</p> <p>11 You said in your mind you think Phil McHugh did not</p> <p>12 want to be CEO; is that right?</p> <p>13 A I am shocked. I never -- He never</p> <p>14 at all indicated he was interested in being CEO from</p> <p>15 any interaction with him.</p> <p>16 Q That you had with him?</p> <p>17 A That I had with him.</p> <p>18 Q Okay. And -- And that's what I'm</p> <p>19 trying to understand. That's based on his</p> <p>20 presentations and the one time you all sat at</p> <p>21 dinner --</p> <p>22 A Correct.</p> <p>23 Q -- is that correct?</p> <p>24 A Correct.</p> <p>25 Q Okay. You made the comment that</p>

1 Phil McHugh was going to be in the proxy statements;
2 is that right?

3 **A By one of the top highly**
4 **compensated individuals I believe the salary was over**
5 **\$2 million a year, that he would have been in the --**
6 **If he accepted the position on the restructuring that**
7 **was occurring he would have been in the proxy.**

8 **Q** He would have been in the proxy
9 either way; isn't that right?

10 **A I don't recall. All I know is that**
11 **it was communicated that he would be one of the top**
12 **executives in the organization.**

13 MR. SABA: That's all I have.
14 Continued in progress.

15 MR. CIOFFI: Again we object to
16 your attempt to continue in progress. No
17 further questions. The witness will read and
18 sign the deposition.

19 MR. SABA: Okay. Thank you.

20 THE WITNESS: Thank you.

21 THE VIDEOGRAPHER: We are off the
22 record at 12:42.
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EILEEN A. MALLESCH

DATE

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(DEPOSITION CONCLUDED AT 12:42 P.M.)

- - -

C E R T I F I C A T E

STATE OF OHIO :
SS:
COUNTY OF BUTLER :

I, Pamela L. Jackson, a duly qualified and
commissioned notary public in and for the State of
Ohio, do hereby certify that prior to the giving of
her deposition, the within named EILEEN A. MALLESCH,
was by me first duly sworn to testify to the truth,
the whole truth, and nothing but the truth; that the
foregoing pages constitute a true and correct
transcript of testimony given at said time and place
by said deponent; that said deposition was taken by me
in stenotypy and transcribed under my supervision;
that I am neither a relative of nor attorney for any
of the parties to this litigation, nor relative of nor
employee of any of their counsel, have no interest
whatsoever in the result of this litigation, and am
not, nor is the court reporting firm for which I am
affiliated, under a contract as defined in Civil Rule
28(D).

IN WITNESS WHEREOF, I hereunto set my
hand and official seal of office at Hamilton, Ohio,
this 26th day of July, 2024.

Commission Expires 11/17/28

1 DEPOSITION ERRATA SHEET

2 Date Taken: July 10, 2024

3 Case Caption: PHILIP R. MCHUGH

4 vs. FIFTH THIRD BANCORP, et al.

5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury

7 that I have read the entire transcript of

8 my Deposition taken in the captioned matter

9 or the same has been read to me, and

10 the same is true and accurate, save and

11 except for changes and/or corrections, if

12 any, as indicated by me on the DEPOSITION

13 ERRATA SHEET hereof, with the understanding

14 that I offer these changes as if still under

15 oath.

16 Signed on the _____ day of

17 _____, 20____.

18 _____
19 EILEEN A. MALLESCH

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